

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

Skriv Investments Ltd.
("Skriv")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 95/203

DATE OF DECISION: May 8, 1996

DECISION

OVERVIEW

This is an appeal by Skriv Investments Ltd. (“Skriv”), under Section 112 of the Employment standards *Act* (the “*Act*”), against Determination CDET# 001606 issued by a delegate of the Director of Employment Standards on March 15, 1996. In this appeal Skriv claims that it had just cause to terminate the employment of Kristy Round (“Round”).

I have completed my review of the written submissions made by Skriv and the information provided by the Director’s delegate. I have concluded that the Determination should be varied.

FACTS

Round was employed by Skriv as a part-time cashier from January 1, 1995 to December 14, 1995 at a wage of \$7.00 per hour. She filed a complaint with the Employment Standards Branch on December 18, 1995 claiming unpaid wages, vacation pay and compensation for length of service.

The Director’s delegate set out the details of Round’s complaint in a letter dated February 19, 1996 to Skriv, but did not receive a response from Skriv.

When the Determination was issued, Skriv forwarded a cheque payable to Round in the amount of \$149.69 for wages and vacation pay owing.

In a letter dated March 20, 1996 the Director’s delegate explained to Round that Skriv’s payroll records show that she did not work after December 10, 1995 and that she had been paid vacation pay as of September 14, 1995. Round was asked to provide any information which was contrary to that provided by Skriv. The letter made it clear that if she did not provide any information to the contrary, Skriv’s payroll records would be taken as being correct. Round did not provide any additional information.

ISSUE TO BE DECIDED

The only issue to be decided in this appeal is whether Round is entitled to compensation for length of service.

ANALYSIS

Section 63 of the *Act* describes an employer's liability to pay compensation resulting from an employee's length of service as follows.

63.(1) After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week's wages as compensation for length of service.

(2) The employer's liability for compensation for length of service increases as follows:

- (a) after 12 consecutive months of employment, to an amount equal to 2 weeks' wages;
- (b) after 3 consecutive years of employment, to an amount equal to 3 weeks' wages plus one additional week's wages for each additional year of employment, to a maximum of 8 weeks' wages.

(3) The liability is deemed to be discharged if the employee

- (a) is given written notice of termination as follows:
 - (i) one week's notice after 3 consecutive months of employment;
 - (ii) 2 weeks' notice after 12 consecutive months of employment;
 - (iii) 3 weeks' notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 weeks' notice;
- (b) is given a combination of notice and money equivalent to the amount the employer is liable to pay, or
- (c) terminates the employment, retires from employment, or is dismissed for just cause.

(4) The amount the employer is liable to pay becomes payable on termination of the employment and is calculated by

- (a) totalling all the employee's weekly wages, at the regular wage, during the last 8 weeks in which the employee worked normal or average hours of work,
- (b) dividing the total by 8, and
- (c) multiplying the result by the number of weeks' wages the employer is liable to pay.

(5) For the purpose of determining the termination date, the employment of an employee who is laid off for more than a temporary layoff is deemed to have been terminated at the beginning of the layoff.

In this appeal, Skriv alleges that it is not liable to pay any compensation under Section 63 because it dismissed Round for just cause [See Section 63(3)(c)].

The current *Act* came into force on November 1, 1995. Section 128 of the *Act* describes the transition from the former *Employment Standards Act* to the current *Act*. In particular, Section 128 states the following:

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128(4) Subject to subsections (5) and (6), section 63 applies to an employee whose employment began before section 63 comes into force and is terminated after that section comes into force.

(5) An employer is liable to pay to an employee referred to in subsection (4), as compensation for length of service, an amount equal to the greater of the following:

(a) the number of weeks' wages the employee would have been entitled to under section 42 (3) of the former Act if the employment had been terminated without compliance with section 42 (1) of that Act;

(b) the amount the employee is entitled to under section 63 of this Act.

(6) The employer's liability to an employee referred to in subsection (4) for compensation for length of service is deemed to be discharged if the employee is given notice according to section 42 (1) of the former Act or according to section 63 (3) of this Act, whichever entitles the employee to the longer notice period.

Under Section 42 of the former *Act*, an employee whose employment was terminated without cause was entitled to 2 weeks' notice or pay in lieu of notice once he or she had completed 6 consecutive months of employment.

Round was employed by Skriv for 11 1/2 months.

Although Skriv alleges that there was just cause to terminate Round's employment, no evidence was submitted to the Tribunal to support that allegation.

Section 63(3) of the *Act* requires that an employee must be given **written notice** of termination or must be **dismissed for cause** if an employer wishes to discharge its liability to pay compensation under Section 63(1) or Section 63(2).

The burden of proof for establishing that Round's employment was terminated for just cause rests with Skriv. Skriv has not provided any proof to substantiate its allegation that just cause existed.

For these reasons I conclude that Skriv is liable to pay 2 weeks' wages to Round. This entitlement comes from Section 128(5) which gives Round entitlement under

Section 42(3) of the former *Act* since it provides for greater compensation than Section 63 of the current *Act*.

ORDER

I order, under Section 115 of the *Act*, that Determination CDET# 001606 be varied to show that Round is entitled to 2 weeks' compensation for length of service (16 hours/week @ \$7.00 per hour) plus 4% vacation pay on that amount plus interest as set out in Section 88 of the *Act*.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GE:sf