

**EMPLOYMENT STANDARDS TRIBUNAL**

In the Matter of an Appeal Pursuant to Section 112 of the  
*Employment Standards Act*, R.S.B.C. 1996, c. 113

- by -

Alex Gair & Sons Ltd.  
("Gair")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Ian Lawson

**FILE NO.:** 97/849

**DATE OF DECISION:** February 19, 1998

## DECISION

### OVERVIEW

This is an appeal by Alex Gair & Sons Ltd. ("Gair") pursuant to s. 112 of the *Act*. The appeal is from a Determination issued by Beverley Huffey, a delegate of the Director of Employment Standards on November 14, 1997. The Determination required Gair to pay vacation pay and compensation for length of service to two employees.

Gair filed an appeal on November 20, 1997. The parties were advised to file any further written submissions by December 16, 1997. The appeal is now decided without an oral hearing, on the basis of written submissions and the record before the Tribunal.

### FACTS

None of the parties has set out the type of business undertaken by Gair, but it is not disputed that Gair filed an assignment in bankruptcy on April 17, 1997. Ms. Huffey sets out the following reasons in the Determination:

I have completed my investigation into these allegations. There was no dispute employees had not been paid vacation for the periods indicated in the attached calculation. The employer failed to substantiate the amount of vacation pay outstanding. I have found the employees' claims for vacation entitlement to be credible and calculated the exact amount upon gross earnings for the periods indicated in the attached calculation.

There was no dispute the employees were not provided with notice of termination in lieu of compensation. The investigation revealed that the employer went into bankruptcy on April 17, 1997 owing wages to the complainants.

Calculations attached to the Determination reveal that vacation pay and compensation for length of service was calculated for employee Abdul Sovani to be \$23,239.46 and for employee Donald Sharland to be \$7,645.00.

Gair submits the Determination is in error because "we have paid both of these gentlemen for holidays and wages completely." No facts are provided to support this assertion. Regarding compensation for length of service, Gair submits:

As for the manner of severance to Mr. Sovani he was asked to move to the new company at a reduction in wages at this time he declined to do so and quit the company so I fail to see where he is due severance pay. In fact for a short term he was paid by the liquidators Campbell and Saunders it was during this transition period that he was asked by myself to move to the new company. ...

As for Mr. Sharland he did move over to the new company and has since quit to move to another job so I fail to see where he is due any severance also.

## **ISSUE TO BE DECIDED**

This appeal requires me to decide whether Gair is liable to pay vacation pay and compensation for length of service for the two employees in question.

## **ANALYSIS**

Gair has not provided any facts or argument that might cast doubt in any way on the Determination under appeal. I reject Gair's submission that employee Sovani is not entitled to severance because he refused to move to a successor company, apparently at a reduced wage. Mr. Sovani's employment was terminated upon Gair's bankruptcy and in the circumstances compensation for length of service is required to be paid under section 63 of the *Act*. The employee Sharland, according to the employer, did move on to a successor company but then quit employment with the successor company. This fact does not change the obligation to pay compensation for length of service when his employment by Gair was terminated without notice by reason of the bankruptcy.

Similarly, Gair provides no facts or argument that cause me to doubt in any way the Director's calculation of vacation pay owing to each employee. As Ms. Huffey noted, it appears undisputed by the employer that vacation pay is owing.

The onus is on the appellant to demonstrate how the Determination under appeal is in error. I find that Gair has failed to meet this onus and I must dismiss its appeal.

## **ORDER**

After carefully considering the evidence and argument, I find that the Determination made by Beverley Huffey is correct and the appeal should be dismissed. Pursuant to s. 115 of the *Act*, I order that the Determination dated November 14, 1997 is confirmed, with interest pursuant to section 88 of the *Act*.

**Ian Lawson**  
**Adjudicator**  
**Employment Standards Tribunal**