

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 -

Prince George Waterbed Warehouse Ltd.
operating as Central Plaza Town Pantry
(" Town Pantry ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE No.: 2000/003

DATE OF HEARING: March 14, 2000

DATE OF DECISION: March 23, 2000

DECISION

APPEARANCES:

Ralph Sather	on behalf of Prince George Waterbed Warehouse Ltd. operating as Central Plaza Town Pantry
Roderick Herd	on his own behalf
no appearance	on behalf of Dianna Higginson
no appearance	on behalf of the Director

OVERVIEW

This is an appeal by Prince George Waterbed Warehouse Ltd. operating as Central Plaza Town Pantry (“Town Pantry”) under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated December 15, 1999 issued by a delegate of the Director of Employment Standards (the “Director”). Town Pantry alleges that the delegate of the Director erred in the Determination by concluding that Roderick Herd (“Herd”) and Dianna Higginson (“Higginson”) were entitled to compensation for length of service in the total amount of \$3,045.67 (includes interest).

PRELIMINARY ISSUE

During the opening of the hearing, Ralph Sather (“Sather”) who is the principal of Prince George Waterbed Warehouse Ltd. operating as Central Plaza Town Pantry advised the panel that he had disposed of the business which employed Herd in August 1999, some 4 1/2 months prior to the issuance of the Determination.

The preliminary issue to be decided in this appeal is therefore whether the Determination has correctly identified Town Pantry as the party who might be liable for the compensation for length of service to Herd and Higginson.

FACTS

Sather testified that he spoke to a representative of the *Employment Standards Branch* (the “Branch”) in late August or early September 1998 in regard to the complaints filed by Herd and Higginson. Sather further stated that after those brief discussions he did not hear anything from the Branch until he received the Determination dated December 15, 1999. Sather further stated that he disposed of the business which had employed Herd and Higginson in August 1999, some 4 1/2 months prior to the issuance of the Determination.

Herd stated that he has no direct knowledge that Sather disposed of the business. Herd further stated that he was unhappy that this matter has taken so long to be addressed.

The submissions of the delegate of the Director did not include a corporate search to indicate either that Town Pantry was or was not the correct entity to be named in the Determination.

ANALYSIS

It is trite to state that it is necessary for the Determination to name the proper person in order for any decision of the Tribunal to have any effect in providing a final resolution to a dispute between the parties.

Section 79 of the *Act* gives the Director the authority to make a determination, however, there is a requirement that the Director be satisfied that a *person* has contravened the requirements of the *Act*. If the wrong person is named in a Determination, that Determination can not stand.

Further, the provisions of Section 97 of the *Act* suggest that perhaps the proper person to be named in this Determination is the person who purchased the business from Town Pantry and not Town Pantry itself. There is however, no evidence with respect to that issue.

Based on the lack of any substantive evidence as to who the proper person to be named in the Determination should be, it is appropriate, in my view, to refer this matter back to the Director for further investigation. It is further appropriate that this further investigation be undertaken as expeditiously as possible.

I have made no determination with respect to the merits of this matter.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated December 15, 1999 be referred back to the Director for further investigation.

Hans Suhr
Adjudicator
Employment Standards Tribunal