

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 -

478801 BC Ltd operating Azzi Pizza
("Azzi Pizza")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampon

FILE NO: 019/95

DATE OF HEARING: June 13, 1996

DATE OF DECISION: June 18, 1996

DECISION

APPEARANCES

Marlon Blando	for	Azzi Pizza
Jason Prevost		on his own behalf
Dave Ages		Director of the Employment Standards

OVERVIEW

This is an appeal by 478801 BC Ltd. operating Azzi Pizza (“Azzi Pizza”), pursuant to Section 112 of the *Employment Standards Act* (“Act”), against Determination # 000091. The Determination was issued by a delegate of the Director of Employment Standards on November 15, 1995. Azzi Pizza claims that it does not owe Jason Prevost (“Prevost”) vacation pay nor compensation for length of service.

Consideration of this appeal falls under the transitional provisions of the *Act*. Section 128(3) of the *Act* states:

If, before the repeal of the former Act, no decision was made by the director, an authorized representative of the director, or an officer on a complaint made under that Act, the complaint is to be treated for all purposes, including Section 80 of this Act, as a complaint under this Act

FACTS

The facts of this appeal are quite straight forward and are essentially as follows:

Prevost was employed by Azzi Pizza as a Part-time cook/delivery person for approximately one year from spring, 1994 to June 9, 1995. He was paid minimum wage plus \$0.50 for each Pizza delivered.

Azzi Pizza was purchased by 478801 BC Ltd from Mahin Enterprises. 478801 BC Ltd. began operating Azzi Pizza on June 1, 1995. There was no interruption in operation as a result of the purchase of the business.

In its appeal of the Determination, Azzi Pizza states that Marlon Blando informed Prevost on June 9, 1995 that he was laid off temporarily, “... until the business picks up.”

Azzi Pizza did not recall Prevost as it ceased operating at its Kingsway location during October, 1995.

Prevost did not receive any notice (written or otherwise) that his employment with Azzi Pizza was terminated.

Prevost did not receive any paid vacation time nor any vacation pay during his employment with Azzi Pizza.

The Determination shows Prevost is owed a total of \$377.40 (\$171.00 in lieu of notice and \$206.40 vacation pay).

Azzi Pizza issued a cheque payable to Prevost on January 5, 1996 in the amount of \$377.40 and delivered it to the Director's delegate. The Director's delegate informed the Tribunal in writing on January 8, 1996 that he had received the cheque "...in full payment of the Determination ... (and) ... this matter may be shown as settled.

Marlon Blando (owner of Azzi Pizza) gave evidence at the hearing that he believed the cheque would be held in trust by the Director's delegate pending the outcome of this appeal. The Director's delegate gave evidence that upon receiving the cheque he left a voice message for Blando to advise him that he assumed the cheque represented payment on full (voluntary compliance). He also stated that his message included a condition that if Blando did not respond within a specified time, the cheque would be issued to Prevost.

ANALYSIS

Section 97 of the Act states:

If all or part of a business or a substantial part of the entire assets of a business is disposed of, the employment of an employee of the business is deemed, for the purpose of this Act, to be continuous and uninterrupted by the disposition.

Thus, Prevost's employment with Azzi Pizza is deemed to be continuous from his date of employment (April, 1994) notwithstanding the sale and purchase of the business on June 1, 1995.

Section 62 of the Act defines a lay off as occurring when an employee earns less than 50% of average weekly wages. Thus, I find that Prevost was laid off, effective June 9, 1995.

Section 1 of the *Act* defines a “temporary lay off” as a lay off of up to 13 weeks in any 20 consecutive weeks. Section 1 also defines “termination of employment” as a lay off other than a temporary lay off. Azzi Pizza did not recall Prevost within 13 weeks of June 9, 1995. Therefore it terminated his employment.

Section 63 of the *Act* requires an employer to pay compensation for length of service unless it gives written notice of termination or dismisses an employee for just cause. Azzi Pizza did not give any notice of termination to Prevost nor did it assert that it had just cause to dismiss him.

For all these reasons I conclude that the Determination should be confirmed. I should also make an additional comment. It would have been a simple matter for the Director’s delegate to obtain written confirmation that the cheque issued to Prevost constituted “voluntary compliance” and/or an agreement that the matter was settled.

ORDER

I order, pursuant to Section 115 of the *Act*, that Determination # CDET 000091 be confirmed.

Geoffrey Crampon
Adjudicator
Employment Standards Tribunal

GC:sr