

An appeal

- by -

Sport Central Enterprises Ltd.

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: John M. Orr

FILE No.: 2003A/34

DATE OF DECISION: April 29, 2003

DECISION

OVERVIEW

This is an appeal by Sport Central Enterprises Ltd. ("Sport Central") pursuant to Section 112 of the Employment Standards Act (the "*Act*") from a Determination dated December 20, 2002 by the Director of Employment Standards (the "Director").

In the exercise of its authority under section 107 of the *Act* the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

Sport Central operates a sports and fitness club and employed Theresa De Castro ("De Castro") as a Customer Service and Sales Manager. She resigned that position on October 31, 2001 but continued to work for Sport Central until December 16, 2001 when Sport Central terminated her employment. During the time of her employment De Castro entered into an agreement with Sport Central to enable her to lease a vehicle. The vehicle was leased in Sports Central's name. De Castro authorised payroll deductions and agreed that to give a \$1000.00 deposit in case Sport Central became liable for any claims in relation to the vehicle.

The Director found that Sport Central was liable to pay De Castro one week's wages as compensation for length of service and that, as no claims had arisen, the \$1000.00 deposit should be returned.

Sport Central appeals from the Determination on the grounds that De Castro had resigned from her employment and that any work done thereafter was on a contract basis and was not thereafter employment.

Sport Central also asks that new evidence be considered that a claim from the Insurance Corporation had recently been received in the amount of \$456.84 and that this should be withheld from the deposit.

ISSUES

The issue in this case is whether Sport Central has demonstrated that the Director has made any substantial error in law or unfairness in process that would warrant any interference in the Director's determination on the issue of compensation for length of service. Secondly, whether the insurance claim should be deducted from the deposit.

FACTS AND ANALYSIS

As submitted by Sport Central the letter of resignation signed by De Castro is clear on its face that she had resigned her employment. However it is also evident that's some form of employment continued thereafter. There is little evidence presented and really no substantial argument presented that this employment was any different from her previous work. Sport Central falls very short from establishing that this work was, in fact, carried out as an independent contractor. I am not persuaded that Sport Central has met the onus of establishing any substantial error by the Director's delegate on this issue.

In regard to the security deposit it is evident that all parties have accepted this agreement as a *bona fides* arrangement for the benefit of Ms. De Castro and as such it appears to be acceptable to all parties that the insurance claim be deducted from the security deposit. I am not inclined to interfere with this position and accordingly the Determination will be varied to deduct the sum of \$456.84 from the total determination.

ORDER

I order, under section 115 of the *Act*, that the Determination dated December 20, 2002 is varied to show that the **Amount Owing is \$911.08** together with any interest calculated according to the *Act*.

John M. Orr
Adjudicator
Employment Standards Tribunal