

An appeal

- by -

Lakeside Tire Ltd. op. as Westbank Tireland  
("Lakeside")

- 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:** April D. Katz

**FILE No.:** 2001/157

**DATE OF DECISION:** May 23, 2001

## DECISION

### APPEARANCES:

Larry Philipott	on behalf Lakeside Tire Ltd.
William Champion	on his own behalf
Robert Turner	on behalf of the Director

### OVERVIEW

Lakeside Tire Ltd. (“Lakeside”), a retail automotive service business, is appealing the Determination of the Director, Employment Standards (“Director”) dated January 25, 2001. The Determination found that Lakeside owed a mechanic, William Champion, (“Champion”), 2 weeks pay for length of service.

### ISSUE

Did the Director err in concluding that Lakeside owed Champion for length of service within the meaning of the *Employment Standards Act* (“Act”)?

### ARGUMENT

Lakeside argues that Champion quit his employment and is therefore not entitled to compensation for length of service.

Champion argues that he loved his work and was grateful to have it. Champion states that the new manager told him he was laid off effective the next day.

### THE FACTS AND ANALYSIS

In an appeal the evidentiary burden is on the appellant to show that the Director’s Determination was in error.

The Appeal does not dispute the findings that Champion was employed from July 20, 1998 to January 15, 2000 as a mechanic at the rate of \$17/hour. The owner of the company found that the business was in trouble and hired a new manager. The new manager worked for a month and decided to end Champion’s employment and hire someone else.

The factual question in dispute was whether Champion quit or was laid off. Lakeside made a number of unsupported allegations in its appeal about Champion being paid for 40 hours a week but working for 39 hours, Champion allegedly working and receiving EI, and a refusal to do a variety of work in the shop. All of the allegations are denied by Champion with supporting

documentation for his position. In any event none of the allegations are relevant to the determination of whether an employee is entitled to compensation for length of service under the *Act*.

The evidence shows that Lakeside's new manager told Champion his employment was ending on January 14, 2000. The manager had arranged for a replacement to start on Monday, who arrived with his equipment before starting. The suggestion that a change of work or salary was offered to Champion is inconsistent with this undisputed evidence.

There is no doubt about the period of employment or the fact that the employment ended on January 15, 2000.

Nothing in the evidence provided on the appeal suggests that there was any reason for Champion to quit his employment. Champion had looked hard and long to find this position originally and liked the work. He received an excellent reference letter from his manager of two years after his employment ended.

An employer is free to end an employee's employment for any reason under the *Act*. When an employer decides to end the employment the employer is obligated to comply with the *Act*. Section 63 of the *Act* sets out an employer's obligations.

#### Liability resulting from length of service

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.

The appeal does not dispute the fact that Champion was employed for more than 12 months and was not allowed to work out a period of notice. Champion is therefore entitled to 2 weeks compensation for length of service as the Determination concluded.

## **CONCLUSION**

Based on the evidence presented I find no basis on which to vary or cancel the Determination. Lakeside has not discharged the onus on it to demonstrate an error in the Determination. I deny the appeal and confirm the Determination

## **ORDER**

Pursuant to section 115 (1)(a) the Determination dated January 25, 2001 is confirmed.

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**April D. Katz**  
**Adjudicator**  
**Employment Standards Tribunal**