

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 -

Skeena Rent-A-Car Ltd.
("Skeena" or the "Employer")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thronicroft

FILE NO.: 98/182

Date of Decision: June 23, 1998

DECISION

OVERVIEW

This is an appeal brought by Skeena Rent-A-Car Ltd. (“Skeena” or the “employer”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on February 27th, 1998 under file number 29-209 (the “Determination”).

The Director’s delegate determined that Skeena owed its former employee, Verna Dorey (“Dorey”), the sum of \$4,167.86 on account of unpaid compensation for length of service (5 weeks’ wages), concomitant vacation pay and interest. The Director’s delegate dismissed Dorey’s claim for compensation for unpaid “banked time” and Dorey has not appealed that aspect of the Determination.

ISSUE TO BE DECIDED

The employer’s appeal concerns Dorey’s length of service. The employer maintains that Ms. Dorey commenced her employment on May 1st, 1994 whereas both Ms. Dorey and the Director maintain that she was continuously employed with Skeena and a predecessor firm from June 12th, 1987 until her termination on November 11th, 1996.

The employer does not assert that it had just cause to terminate Ms. Dorey; the employer does say that having already paid Dorey \$2,220 as “severance pay”, it has no further liability to her under section 63 of the *Act*.

FACTS AND ANALYSIS

Ms. Dorey commenced her employment with Tilden Car Rental Inc. On June 12th, 1987. On May 1st, 1994, the business was sold to Skeena who continued to operate the same business (still using the “Tilden” moniker) from the same premises (the Prince George and Quesnel airports) as had formerly been the case when Tilden Car Rental Inc. operated the business. Ms. Dorey’s employment continued uninterrupted by the sale of the business.

According to the information provided to the Tribunal by way of a memorandum dated March 19th, 1998 (appended to the employer’s appeal form):

“Prior to the purchase Tilden Inc. has 15 employees. We determined the number of employees should be 8-9. For this reason, we requested all employees to be terminated prior to the purchase. We did not want to be “on the hook” when we determined which employees would be laid off by Skeena Rent-A-Car.” [sic]

In a letter dated March 31st, 1994, from Tilden Car Rental Inc. to Skeena, the terms and conditions of the proposed sale of the business were set out. Skeena was to take an assignment of certain Transport Canada leases and agree to purchase other tangible assets such as vehicles, furniture and signs. The March 31st letter continues:

“STAFF AS OF MAY 1ST, 1994 (not included in the agreement)

TCRI will terminate employment of all Prince George employees and would hope that the buyer will offer employment with similar terms and conditions.”

It should be noted that the March 31st letter is a proposal only and does not purport to represent a concluded agreement. There is no evidence before me that Tilden actually terminated Ms. Dorey -- or any other Tilden employee -- and issued her a record of employment (and provided the appropriate notices or severance pay in lieu thereof) prior to the sale. Accordingly, section 97 of the *Act* governs this situation and Ms. Dorey’s employment is deemed “to be continuous and uninterrupted” by the sale of the business. Section 97 provides as follows:

“97. Sale of business or assets -- 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 purposes of this *Act*, to be continuous and uninterrupted by the disposition.”

Thus, for purposes of the *Act*, Ms. Dorey’s employment would date from June 12th, 1987 (her commencement date with Tilden) rather than from May 1st, 1994 (the closing date of the sale of the business).

In a letter to the Tribunal dated April 22nd, 1998, the employer acknowledged (perhaps unwittingly) that Ms. Dorey’s employment continued uninterrupted by the sale. Indeed, following the sale, she was promoted from her former position of assistant manager of the Prince George operation to manager of that operation. I would also note that the final paragraph of the employer’s March 19th 1998 memorandum (see above) to the Tribunal clearly implies that Skeena made independent decisions as to which particular employees would be “laid off” and that, at the point of lay-off, the various employment relationships had already been established with Skeena (otherwise, if all of the former Tilden employees *had already been terminated*, why would Skeena find it necessary to “lay-off” anyone?).

At the point of her termination, Ms. Dorey’s monthly salary was \$3,200. She was paid 3 weeks’ wages at termination pay but was entitled to 8 weeks’ wages; thus, the employer was obliged to pay a further 5 weeks’ wages by reason of section 63(2) of the *Act* -- precisely the amount set out in the determination together with vacation pay and interest.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$4,167.86** together with whatever further interest that may have accrued. Pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal