**BC EST #D289/99**

# 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 -

Edna Vargas
("Vargas")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE NOS.:** 1999/273

**DATE OF DECISION:** October 25, 1999

## DECISION

## OVERVIEW

Edna Vargas ("Vargas, also, "the Complainant") appeals a Determination by a delegate of the Director of Employment Standards dated April 21, 1999. The appeal is pursuant to section 112 of the *Employment Standards Act* (the "*Act*").

The Determination responds to a Complaint by Vargas against her former employer, Winnie Chow operating 6th Street House ("the employer"). Vargas claimed compensation for length of service. The Director's delegate found that the employer's liability to pay compensation for length of service had been discharged, if not because Vargas had retired, then because Vargas had been given written notice of termination as required by the *Act*.

Vargas, on appeal, claims that she did not want to quit work but was forced to retire. She is no longer able to work for health reasons and claims "termination pay" on what I understand to be compassionate grounds and also on the basis that her health problems are the result of work for the employer. Vargas asks whether some other Act might have been violated and whether some sort of compensation is owed for that reason.

## ISSUES TO BE DECIDED

The sole issue for me to decide is whether or not the employee is owed compensation for length of service under the *Act.*

The Complainant may not appreciate the powers of the Tribunal but they are limited and pertain to the application of the *Employment Standards Act* by the Director and her delegates. It is for courts and other administrative tribunals to decide whether or not Vargas is owed compensation under other legislation. The matter of whether or not compensation is owed for reason of work related injury or disease is, for example, a matter for the Workers' Compensation Board to decide. As an Adjudicator of the Employment Standards Tribunal I will not decide such a matter.

## FACTS

6th Street house is an eleven bed facility for the mentally ill. It is funded by the Simon Fraser Health Region.

Edna Vargas was employed by the employer for more than 10 years.

The delegate found that the employer and former employee were in agreement on points of fact. Vargas does not dispute the facts as they are set out in the Determination, the following included:

- All employees of the employer must have a valid CPR certificate;
- while Vargas had just such a certificate at one time, it had expired;
- Vargas was given written warning on or about April 23, 1998 that she would be terminated unless she could produce a valid CPR certificate;
- Vargas failed in attempts to renew her CPR certification;
- Vargas subsequently advised her employer that she was not going to take the CPR course again.

When it became clear that Vargas was not going to renew her CPR certification, the employer suggested that Vargas might want to retire. It was a realistic option given her age.

Vargas did not want to retire. What she wanted to do was to keep on working at 6th Street House. But regulations require that all employees working with mentally challenged persons in a community care home in British Columbia possess a current CPR certificate. She had not renewed her CPR certification by the time of her termination in July of 1998. She attended a retirement luncheon held in her honour. She applied for and began to receive a disability pension. The employer assumed that Vargas had decided to retire and gave retirement as the reason for the termination on completing her ROE.

**ANALYSIS**

Vargas is concerned that the delegate may have made an error in applying the law. She did not.

It is section 63 of the *Act* that sets out the circumstances where compensation for length of service is to paid to an employee. Subsections 1, 2 and 3 are of importance in this case and are as follows:

> **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.*

An employer is not automatically required to pay compensation for length of service on terminating an employee. It appears that Vargas does not realise that an employer's liability to pay compensation for length of service may be discharged: That the employer does not have to pay such compensation if the employee retires, is terminated for just cause or simply given appropriate written notice of termination.

Vargas was employed for more than 8 years. As such the employer's liability to pay compensation for length of service was the maximum, 8 weeks' wages.

Vargas says that she did not want to retire, that she wanted to continue working for the employer. But if the employment was to continue, Vargas had to gain CPR certification. In that she was either unable or unwilling to do that, there was no possibility that the employment could somehow continue. That would be contrary to the regulations which govern home care facilities like that of the employer.

There are plain, clear facts to show that Vargas voluntarily decided to retire. She decided not take further CPR courses. That decision was not forced on her by her employer. No one forced her to attend the retirement luncheon that was arranged in her honour. She did so voluntarily. All of that is quite inconsistent with continuing the employment.

But even if Vargas did not retire, that it is the employer that severed the employment, I am satisfied that Vargas is not owed length of service compensation. The delegate correctly recognises that the employer's liability to pay Vargas compensation for length of service was discharged in that Vargas received the amount of written notice of termination to which she is entitled to under the *Act*.

I am satisfied, beyond the above, that the employer also had just cause to terminate the employment. That is not because of some fault of the employee, or some inappropriate act, but because of the requirement that all of the employer's employees have a valid CPR certificate. In this case, Vargas was clearly told that her job was in jeopardy unless she renewed her CPR certificate, she was given time to renew her certification, did not do so, and in fact had announced that she would not make any further attempt to do so. There is no question in my mind that the employer had, by July, just cause to terminate the employment.

I accept that Vargas did not want to leave her employment. And I have no reason to doubt that Vargas is suffering from diabetes and arthritis as claimed and that it was for reason of the state of her health and age that she was unsuccessful in completing CPR courses that were taken. The circumstances of her termination are most unfortunate. But having said that, it remains, that Vargas is not owed any amount of money under the *Employment Standards Act.* There is no provision in the *Act* for payments on compassionate grounds, no matter how unfortunate may be the circumstances of a person's termination. As it stands, the *Act* is designed to ensure only that employees receive the wages and benefits to which they are entitled and force employers to observe minimum employment standards. There is no evidence that the employer is in violation of any section of the *Act* in this case.

**ORDER**

I order, pursuant to section 115 of the *Act*, that the Determination dated April 21, 1999 be confirmed.

**Lorne D. Collingwood**
**Adjudicator**
**Employment Standards Tribunal**