

An appeal

- by -

Elena M. Vinarskaia

- 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:** Norma Edelman

**FILE No.:** 2002/282

**DATE OF DECISION:** July 10, 2002

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the Employment Standards Act (the "Act") by Elena Vinarskaia ("Vinarskaia" or the "Appellant") of a Determination issued by a delegate of the Director of Employment Standards on May 10, 2002. The delegate found that Gateway Casinos Inc. ("Gateway" or the "Respondent") paid Vinarskaia one week's wages as compensation for length of service upon her dismissal and therefore it did not contravene the Act. Vinarskaia appealed the Determination on the basis that she does not want others to go through what she did at Gateway and she wants Gateway to take responsibility for its action. This appeal was decided based on the written submissions of the parties.

### ISSUE TO BE DECIDED

Has the Appellant shown the Determination to be wrong such that it should be varied or cancelled?

### FACTS

Vinarskaia worked at Gateway as a dealer from August 24, 2001 to December 30, 2001. She was dismissed from her job.

On January 24, 2002, Vinarskaia filed a complaint at the Employment Standards Branch alleging she was dismissed contrary to the requirements of the Act.

On May 10, 2002, the delegate issued a Determination in which he found there was no contravention of the Act because Gateway paid Vinarskaia one week's wages as compensation for length of service.

Vinarskaia appealed the Determination on May 16, 2002. She wants to be sure that what happened to her at Gateway will not happen to another person and she wants Gateway to take responsibility for its action. Vinarskaia believes Gateway and certain employees of Gateway did not treat her fairly or properly and the reason she was fired was because she complained about her supervisor. She further says her health has been negatively impacted by the conduct of the Respondent. Vinarskaia's appeal included documents, which show she has also filed a complaint at the Human Rights Commission apparently alleging Gateway refused to continue to employ her because of her mental disability.

The delegate and Gateway were invited to reply to Vinarskaia appeal.

Gateway replied that it decided Vinarskaia would be dismissed on December 30, 2001 but it was unable to advise her of the decision as she booked off on sick leave on January 2, 2002. On January 9, 2002 a meeting was arranged with Vinarskaia and she was advised that her employment was terminated. As Vinarskaia had been employed for just over 4 months she was paid \$330.00 or one week's wages. According to Gateway it dealt with the dismissal in accordance with the requirements of the Act. In its submission, Gateway does not specify the reason it dismissed Vinarskaia. However, in a document sent by Gateway to the Human Rights Commission, which was included with Vinarskaia's appeal materials, it makes reference to performance issues as being the reason Vinarskaia's employment was terminated.

The delegate replied that in light of his findings in the Determination and the fact that Vinarskaia is proceeding before the Human Rights Commission, the appeal should be dismissed.

In reply to the above submissions, Vinarskaia reiterated her position that she was mistreated by her supervisor, and the Manager at the casino failed to rectify the situation in a fair and effective manner. As a result, her health has been severely damaged. Vinarskaia is also of the view that the decision to dismiss her was taken after December 30, when the company was advised she had a medical note indicating she needed two weeks off work. Finally, Vinarskaia stated that she was an excellent worker, with no records in her file regarding performance issues; the casino Manager has hurt her feelings and has damaged her health and reputation; and she wants the company to take responsibility for its action.

## **ANALYSIS**

In an appeal, the burden is on the Appellant to show the Determination is an error. In this case, I am not satisfied that the burden has been met.

Section 63 of the Act states that an employee is entitled to compensation for length of service after 3 consecutive months of employment. An employee is entitled to one week's wages if she/he has been employed less than 12 months. In this case Vinarskaia was employed for four months and therefore she is entitled to one week's wages. Gateway paid this amount to Vinarskaia prior to her filing a complaint at the Employment Standards Branch. There is no other remedy under the Act available to Vinarskaia. There are no provisions in the Act, which entitle an employee to be compensated for mistreatment, hurt feelings, or damage to her/his health and reputation. The delegate has no jurisdiction to grant such remedies or to make Gateway "take responsibility" for its alleged conduct in this case. The delegate has not made an error in this regard and the appeal is dismissed for that reason alone.

## **ORDER**

Pursuant to section 115 of the Act I order that the Determination be confirmed.

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**Norma Edelman**  
**Vice-Chair**  
**Employment Standards Tribunal**