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 -

Ryan E. Lake
("Lake")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE NO.: 2000/370

DATE OF DECISION: September 25, 2000

DECISION

OVERVIEW

This is an appeal brought by Ryan E. Lake ("Lake") pursuant to section 112 of the *Employment Standards Act* (the "*Act*") from a Determination issued by a delegate of the Director of Employment Standards (the "Director") on May 2nd, 2000 under file number 095610 (the "Determination").

The Director's delegate determined that Lake owed his former employee, Catherine Noble ("Noble"), the sum of $446.51 on account of one week's wages as compensation for length of service (see section 63 of the *Act*) together with concomitant vacation pay and interest. The Director's delegate rejected Lake's position that the Insurance Corporation of British Columbia ("ICBC") was Noble's actual employer; the delegate also rejected Lake's assertions that: i) Noble had been hired on a "week to week" basis and, in any event, ii) he had just cause for terminating Ms. Noble's employment.

ISSUES ON APPEAL

Lake's reasons for appeal, as set out in his appeal documents, are as follows:

- "I did give notice prior to termination *just not in writing*" (my *italics*);
- Lake claims that he "made [Noble an] offer of re-employment"—although not specifically referred to in the appeal documents, I presume that Lake is relying on section 65(1)(f) of the *Act* which provides that compensation for length of service is not payable if an employee "has been offered and has refused reasonable alternative employment by the employer"; and
- Lake says that the delegate erred in not finding ICBC to be Noble's "deemed" employer.

Mr. Lake also says that he did not pay Noble "late" as mentioned in the Determination. This ground is irrelevant to the question of Ms. Noble's entitlement under section 63 and, in any event, the delegate did not make an unequivocal finding on that point—this matter is only raised, in the Determination, under the heading "Complainant's Position" and, as noted, no finding of fact was made by the delegate with respect to this latter allegation.

BACKGROUND FACTS

Lake was injured in a motor vehicle accident and, as a result of the accident, was receiving certain disability benefits from ICBC—Lake used a portion of these benefits to pay Ms. Noble who served as Lake's personal "home care worker". Ms. Noble was employed for some 5 months from mid-October 1998 until her termination on or about March 12th, 1999. Noble was paid at a rate of $8 per hour. According to the information set out in the Determination, Noble claimed Lake told her that her employment was being terminated because ICBC had discontinued

Lake's disability payments. Lake, on the other hand, advised the delegate that he terminated Noble's employment because she frequently asked to be paid before her regular payday.

ANALYSIS

In the absence of *written* notice of termination (and Lake concedes that there was no such written notice in this case), the first ground of appeal must fail. Section 63(3) of the *Act* could not be clearer—an employer's obligation to pay compensation for length of service is only discharged if the requisite *written* notice of termination is given to the employee (see *e.g., G.A. Fletcher Music Company Limited,* BC EST #D213/97 and the cases cited therein).

As for the second ground of appeal, the *only* information before me (neither the delegate nor Ms. Noble filed any submission with the Tribunal regarding Lake's appeal) is the following comment contained in Lake's appeal documents: "...I stretched [Noble's] employment out as long as I could, and even when I finally had to let her go, when she protested, I offered to employ her for another week." Had Lake given Noble written notice of termination at this point—to take effect one week hence—Lake's obligations under the *Act* would have been fully satisfied; section 63(3) of the *Act* contemplates the giving of what might be termed "working notice". However, that is not the situation that actually transpired and Lake's offer of only one additional week's employment could hardly be characterized as "reasonable" nor was it, in fact, an offer of "alternative" employment (see *Hopp,* B.C.E.S.T. Decision No. D433/97).

Finally, I cannot accede to Lake's submission that ICBC, rather than Lake himself, was Noble's employer. In support of his argument, Lake relies on a September 1998 decision, issued by Revenue Canada under the *Insurable Earnings and Collections of Premiums Regulations* which, in turn, were promulgated under the federal *Employment Insurance Act* (and which decision is now under appeal to the Tax Court of Canada). This latter decision was subsequently confirmed by the Revenue Canada Appeals Division by way of a letter issued on August 27th, 1999. The Revenue Canada decisions concern a claim filed by Mr. Lake's former home care assistant, a Ms. Shannie Harvey, for employment insurance benefits.

The Revenue Canada decision has absolutely no relevance to the present appeal. First, decisions rendered under the federal *Employment Insurance Act* and accompanying regulations do not have any precedential value with respect to the provincial *Employment Standards Act.* Second, the facts in this latter decision are quite different from those in the present appeal; in particular, Ms. Harvey was paid directly by ICBC (unlike the situation here where Noble was paid directly by Lake). Third, in light of the definitions of "employer" and "employee" contained in section 1 of the *Act,* it is clear that Noble was employed by Lake. Fourth, even if it could be said that ICBC was an "associated" employer—a highly doubtful proposition, in my view—Lake would still be liable, in his own right, to pay Noble one week's wages as compensation for length of service. Finally, and perhaps most importantly, the August 27th, 1999 Revenue Canada decision held that *both* ICBC and Lake were Harvey's employers and thus, irrespective of the finding vis-à-vis ICBC, *Lake was found to be Ms. Harvey's actual* (as opposed to deemed) *employer:*

"It has been decided that *Shannie Harvey was employed by Ryan Lake under a contract of service and thus was employed in insurable employment*; as Shannie Harvey was paid by the

Insurance Corporation of British Columbia, the Insurance Corporation of British Columbia was deemed to be the employer of the insured person *in addition to the actual employer*." (my *italics*)

The appeal is dismissed.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **$446.51** together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal