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-

Victoria Limited Editions (Nanaimo) Ltd.

(the "employer")

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 98/475

DATE OF DECISION: August 27th, 1998

DECISION

OVERVIEW

This is an appeal brought by Victoria Limited Editions (Nanaimo) Ltd. (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 July 16th, 1998 under file number 29882 (the "Determination").

The Director determined that the employer was liable for $3,152.49 on account of compensation for length of service (see section 63 of the *Act*) owed to three former employees--Angela Davidson, Jean MacKay and Carol Wells.

FACTS

According to the information set out in the Determination, all three former employees were sales clerks who were "laid-off" (with one day's verbal notice) on April 14th, 1998. The employer's retail operation has now been closed down and none of the employees ever received any further notification from the employer regarding their employment status. The employer's payroll supervisor apparently advised the Director's delegate that the store was closed "temporarily" and will reopen "soon". The relevant portions of the Determination read as follows:

> "These three employees were placed on temporary layoff April 14, 1998. By definition, that is their first week of lay off and by definition a temporary layoff can not exceed thirteen weeks in a period of twenty consecutive weeks. As that period expired on July 11, 1998 and these Employees have not been recalled to work, they have deemed to have been terminated at the commencement of the lay off period, and now become entitled to compensation for their length of service." [sic]

According to the information provided on behalf of the employer, it is "actively looking for a permanent space to reopen" and that the business was closed down when "we were forced out of our lease with 5 days notice by the landlord" [sic]. The employer maintains that it is "seeking a permanent location" and "maintain[s] that the [former employees] have not been terminated". The employer asks that the Tribunal give it "more time to be able to secure a permanent location" and that it believes "there is an Issue of Just Cause here." The employer does not dispute the delegate's calculations regarding the amounts owed to each employee, merely the former employees' respective *entitlements* under section 63 of the *Act.*

ANALYSIS

I need not question the validity of the factual assertions made the employer in its appeal documents. Even accepting the employer's assertions at face value--namely, that the business was temporarily closed when the employer's landlord directed its bailiff to execute a distress warrant--the Determination is entirely proper.

Section 1 of the *Act* states that a "termination of employment includes a layoff other than a temporary layoff"; in turn, a "temporary layoff" means, for an employee who does not have a contractual right of recall, "a layoff of up to 13 weeks in any period of 20 consecutive weeks". Section 63(5) of the *Act* states that "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*" (*italics* added).

Even though it may have been (and may continue to be) the employer's intention to only lay off the employees on a temporary basis, under the *Act*, the employees are now deemed to have been terminated thus triggering the employer's obligation, in the absence of the appropriate amount of written notice of termination, to pay compensation for length of service.

Lastly, it should be noted that the forced closure of the employer's operations due to the execution of a writ of distress by the landlord--whether the writ was executed for failure to pay rent or for failure to to observe any other covenant of the employer's lease--does not amount to just cause to terminate. There is no evidence before me (or even the suggestion) that the former employees in any way breached their contracts of employment with the employer and thereby gave the employer just cause to terminate their employment.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **$3,152.49** together with whatever further interest that may have accrued, in accordance with section 88 of the *Act*, since the date of issuance.

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Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal