

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 -

Susan L. Christensen
("Christensen")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE NO.: 98/432

DATE OF DECISION: September 14, 1998

DECISION

OVERVIEW

This is an appeal by Susan L. J. B.. Christensen ("Christensen") pursuant to Section 112 of the *Employment Standards Act* (the "Act") against a Determination of a delegate of the Director of Employment Standards (the "Director") on June 12, 1998. The Determination found that Christensen and a number of other complainants were not entitled to payment of overtime wages. Christensen appealed on the grounds that she had not been paid compensation for length of service as specified by the Act. Christensen's former employer, Vanderpol's Eggs Ltd. ("Vanderpol's") responded that Christensen's employment had not been interrupted. She had been employed by Golden Valley Foods ("Golden Valley"), the purchaser of part of Vanderpol's business, and which occupies the same building as Vanderpol's. The Director's delegate stated that he had not made a determination covering compensation for length of service pending the outcome of an application for reconsideration of a decision of the Tribunal in another case. This case was decided on the basis of written submission.

ISSUES TO BE DECIDED

The issue in this case is whether Christensen is entitled to compensation for length of service.

FACTS

The basic facts of the case were not in dispute. Christensen was employed at Vanderpol's from December 31, 1980 through July 12, 1997 as an egg grader/packer. On June 18, 1997, the president of Vanderpol's wrote Christensen informing her that the egg grading and distribution portion of Vanderpol's business had been purchased by Golden Valley Foods Ltd. ("Golden Valley") effective July 13, 1997. The letter further stated that Christensen was receiving working notice of layoff effective July 12, 1997. The layoff did occur on July 12. Vanderpol's paid Christensen her wages through July 11, vacation pay and overtime on July 14.

Shortly after receiving the June 18 letter, Christensen successfully applied for a position with Golden Valley, starting July 14, 1997. She presented evidence that she was treated as a new hire and was subject to a probation period of three months. However, it appears that Golden Valley stated that she would receive credit for five years' service with Golden

Valley for purposes of her vacation entitlement and immediate eligibility for "the group plan." Her new position was an "Egg Candler/Packer."

On January 2, 1998, Christensen filed a complaint with the Employment Standards Branch claiming that Vanderpol's owed her overtime pay, compensation for length of service and the proceeds of a profit sharing plan. Christensen produced records of her time worked prior to her layoff. Vanderpol's reviewed their payroll records and concluded that it owed a number of former employees overtime pay and corresponding vacation pay. The record in this case does not state whether Christensen received overtime pay as a result of Vanderpol's review, but she did not raise the matter in her appeal.

The Director's delegate issued the Determination in question on June 12, 1998. It covered complaints from ten former employees of Vanderpol's, including Christensen. The Determination found that a 1980 variance should apply to the hours of work of the complainants. In a statement to the Tribunal, the delegate pointed out that the Director was considering a request for reconsideration of a Tribunal decision on the subject and would issue a determination covering compensation for length of service in light of the outcome of that proceeding.

Christensen's appeal concerned only her compensation for length of service.

ANALYSIS

Section 97 of the Act states:

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 purposes of this Act, to be continuous and uninterrupted by the disposition.

The "working notice" that Christensen received on June 18, 1997 was less than her compensation for length of service as required by Section 63 of the Act. However, she began work for Golden Valley, the purchaser of the part of Vanderpol's in which she was employed, immediately after her termination by Vanderpol's.

The Determination in question did not address compensation for length of service. The Director's delegate stated to the Tribunal and to Golden Valley that he would issue a separate determination on that subject. His instructions for the determination would depend on the outcome of a possible reconsideration of a decision by this Tribunal. The second determination, when it is issued, could affect Christensen's rights under Section 97 of Section 63 of the Act. In this case, I should rely on the delegate's undertaking that Christensen's entitlement to compensation for length of service and her status with Golden Valley will be addressed in a future determination. Christensen obviously will have the right to appeal that determination should she wish.

In Marjorie M. Wilson, BC EST #D398/98, involving an appeal from another employee covered by the June 12, 1998 determination, I addressed the issues of overtime pay and profit sharing for former employees of Vanderpol's. Although Christensen did not raise either issue in her appeal of the Determination, the same conclusion presumably would apply to her circumstances, assuming that her hours of work were under the same schedule and variance as Wilson's.

ORDER

For these reasons, pursuant to Section 115 of the *Act*, the Determination of June 12, 1998 is confirmed.

**Mark Thomspson
Adjudicator
Employment Standards Tribunal**