

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 -

Sheridan Carpet Cleaning and Janitorial
("Sheridan" or "the employer")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Jerry Brown

FILE NO.: 98/390

DATE OF DECISION: September 14, 1998

DECISION

OVERVIEW

This is an appeal by Sheridan Carpet Cleaning and Janitorial (“Sheridan” or “the Employer”), pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) from a Determination issued by the Director of Employment Standards on May 27, 1998. The Director found that Kevin Solonyko (the “Complainant”) was entitled to compensation for length of service from Sheridan.

The Director’s delegate had determined that the Employer was in contravention of Section 63(1) (2) (3) of the *Act* and owed the complainant \$2,080.00 in compensation for length of service, \$83.20 in vacation pay and \$69.62 in interest for a total of \$2,232.82.

The Employer claims that the Determination was incorrect.

ISSUES TO BE DECIDED

- 1) Is the complainant entitled to compensation for length of service?
- 2) If the answer is to 1 is yes, how much is the complainant owed?

FACTS

The Complainant was hired by Sheridan in February 1993. This employment was continuous until November 5, 1997. There was interruption in this employment in 1996 due to a labour dispute. This “gap” was for approximately six weeks and employment was resumed July 9, 1996.

On or about November of 1997 Sheridan unexpectedly lost its contract to supply janitorial services to Overwaitea and terminated the Complainant’s employment.

On May 27, 1998 the Director’s delegate issued a Determination finding that the Employer was in breach of the *Act*.

ANALYSIS

The first issue to be dealt with whether or not the Complainant is entitled to compensation for length of service. The Employer contends in its appeal submission that because the complaint’s has found another job it is relieved of any obligation to pay compensation. There is no support, in the *Act*, for such a contention.

Additionally, I note that the Employer in an earlier submission dated July 24, 1998, acknowledges that it would have given the complainant "proper notice" had Sheridan been able to give such notice. The Employer goes on to say "As it was, I had no recourse."

This acknowledgment by the Employer that proper notice was due to the Complainant speaks for itself.

The second issue is the amount of compensation owed to the complainant.

In the Employer's submission seeking an appeal of the Determination, dated June 19, 1998, the Employer raises the issue of whether or not a break in employment in 1996 was temporary or permanent. The Employer's contention is that this break in service reduced the employer's obligation to pay compensation. I agree with the finding of the Director's delegate that the layoff was due to a labor dispute that was temporary in nature. I find there is no new evidence put forth by the Employer in his appeal submission that would persuade me otherwise.

This being the case I find that the Determination is correct in the amount set forth.

The Employer raises the issue of paying the complainant in installments. Unfortunate as the Employer's financial circumstances may be, those circumstances do not absolve it of its liabilities under the *Act*.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of \$2,232.82 together with whatever further interest may have accrued since the dated of the Determination.

Jerry Brown
Adjudicator
Employment Standards Tribunal

JB:sa