

An appeal

- by -

Thuy Le
("Le")

- 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: Kenneth Wm. Thornicroft

FILE No.: 2002/325

DATE OF DECISION: September 16, 2002

DECISION

OVERVIEW

This is an appeal filed by Thuy Le (“Le”) pursuant to section 112 of the *Employment Standards Act* (the “Act”). Le appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on May 24th, 2002 (the “Determination”). The Director’s delegate determined that Le’s employer, R.C. Purdy Chocolates Ltd. (“Purdy”), was not obliged to pay Le any further vacation pay (see section 58 of the *Act*) as of the date of the Determination.

By way of a letter dated August 22nd, 2002 the parties were advised by the Tribunal’s Vice-Chair that this appeal would be adjudicated based on their written submissions and that an oral hearing would not be held (see section 107 of the *Act* and *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575).

ISSUES ON APPEAL

Le’s appeal documents do not disclose, on their face, any valid grounds of appeal. Le’s appeal form contains the following handwritten note:

- “- There is a calculation missing of income of January 1, 1995 to July 15, 1995 (as attachment #2 of termination [sic])
- I have been employed full time with Purdy’s continuously since 1981 without laid off [sic] or leave of absence
- Attachment #A provides vacation calculation and T4 slip”

Le’s grounds of appeal are clarified in a letter dated August 2nd, 2002 addressed to the Tribunal in which Le claims an entitlement to an additional \$1,181.08 in vacation pay.

This latter figure is to be contrasted with the \$900 claimed during the delegate’s investigation and the nearly \$4,700 claimed in the above-mentioned “Attachment A” to Le’s appeal form. In a “Request for a Reconsideration” form filed by Le on June 26th, 2002, Le claimed unpaid vacation pay in the amount of \$1000 based on her not having received “vacation pay in full in year 1999”.

FINDINGS

It is not at all clear on what basis Le claims that she is owed additional vacation pay. Le has provided various calculations none of which is consistent with the other and none of which is corroborated by credible payroll records. The delegate, for her part, relied on the employer’s payroll records and found them to be reliable and accurate. Based on these records, the delegate concluded that Le did not have an *immediate entitlement* to be paid any further vacation pay. The delegate did conclude that Le had some accrued vacation pay (over \$900) that was not payable by the employer as of the date of the Determination.

So far as I can determine, Le takes issue with the employer’s contention that a payment made in July 1995 fully paid out her vacation pay entitlement as of that date. However, if there was a vacation pay shortfall

payable as of July 1995 (and the evidence does not support that contention), such a claim would be barred by virtue of section 80 of the *Act*.

In sum, based on the material before me, I am unable to conclude that the Determination is incorrect.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal