

An appeal

- by -

Vogue Brassiere Incorporated

- 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: Norma Edelman

FILE No.: 2002/403

DATE OF DECISION: September 24, 2002

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the Employment Standards Act (the "Act") by Vogue Brassiere Incorporated ("Vogue") of a Determination that was issued on July 10, 2002 by a delegate of the Director of Employment Standards.

The delegate found that Vogue owed Joanna Pitts ("Pitts") and Karen Archer ("Archer") a total of \$6801.28 on account of vacation pay, compensation for length of service, expenses, and interest. Vogue disputes the delegate's calculations as they relate to amount of vacation pay awarded to Pitts and Archer.

This appeal has been decided based on the written submissions of the parties.

ISSUE TO BE DECIDED

Has Vogue shown that the Determination should be varied as it relates to the amount of vacation pay awarded to Pitts and Archer?

FACTS AND ANALYSIS

Pitts and Archer were laid off work on December 28, 2001 by Vogue. Vogue filed for bankruptcy on March 12, 2002.

On July 10, 2002 the delegate issued a Determination which found that Pitts and Archer were owed 6% vacation pay and compensation for length of service and Archer was also owed wages for telephone expenses that she incurred while working for Vogue.

Frank Piltz ("Piltz") filed an appeal of the Determination on July 23, 2002. The Trustee of the estate of Vogue advised the Tribunal on August 1, 2002 it had no objection to Piltz conducting the appeal in his capacity as a Director of Vogue.

Piltz wants the Tribunal to change the Determination as it relates to the award for vacation pay. He says Pitts and Archer worked less than five years and as a result they are only entitled to 4% vacation pay. He enclosed a copy of corporate policy confirming that only employees with more than 5 years of service are entitled to 6% vacation pay. He calculated that for the period May 1 to December 14, 2001 Pitts was owed $4\% \times \$14,546.40 = \581.86 and Archer was owed $4\% \times \$20,561.68 = \822.47

The delegate, Pitts and Archer were invited to reply to the appeal.

In a submission dated August 6, 2002 the delegate said that Pitts and Archer agree their vacation pay should be calculated based on 4% and not 6% of gross wages. She also said Piltz's calculations do not include wages paid to Pitts and Archer on January 4, 2002. She calculates that Archer is owed a total of \$3,460.81 which includes vacation pay in the amount of $4\% \times \$21,069.37 = \842.77 and Pitts is owed a total of \$2,543.14 which includes vacation pay in the amount of $4\% \times 14,865.60 = \$594.62$.

In a submission dated August 20, 2002 Pitts and Archer replied that their entitlement for vacation pay is 4% and they made an error when they claimed vacation pay based on 6% of earnings.

Piltz was given an opportunity to make a final reply to the above submissions. The Tribunal received no reply.

The burden is on the Appellant, Vogue, to show that the Determination is wrong. I am satisfied that Vogue has met that burden with respect to the amount of wages awarded to Archer and Pitts for vacation pay.

There is no dispute that Pitts and Archer are only entitled to 4% and not 6% vacation pay.

In his appeal, Piltz said that the vacation pay should be calculated on wages earned for the period May 1 to December 14, 2001. The delegate says that Piltz did not include wages that were paid to Pitts and Archer on January 4, 2002. Insofar as Piltz did not challenge the delegate on this point, I accept that the vacation pay should be calculated on the wages earned from May 1 to January 4, 2002. I am also satisfied that the delegate's calculations for vacation pay as set out in her August 6, 2002 submission are accurate.

ORDER

I order pursuant to Section 115 of the Act that the Determination is varied to show that Vogue owes Pitts \$2,543.14 and it owes Archer \$3,460.81 for a total of \$6,003.95.

Norma Edelman
Vice-Chair
Employment Standards Tribunal