

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 -

Teamwork Property Solutions Ltd.
("TPS")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

FILE NO.: 97/589

DATE OF DECISION: September 30, 1997

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Teamwork Property Solutions Ltd (“TPS”) of a Determination of a delegate of the Director of Employment Standards (the “Director”) dated July 22, 1997. In the Determination the delegate concluded TPS was responsible to a former employee of TPS, Theresa Crerar (“Crerar”), in an amount totaling \$1779.64, and comprising length of service compensation and unpaid vacation pay in an amount of \$1683.69 together with interest in an amount of \$95.95. The Determination was sent to TPS addressed to the attention of Masoud Shahrvand and Darryl Adams. TPS disputes the Determination, claiming they are not the person responsible for the amounts owed to Crerar, claiming that Crerar was not an employee of TPS, but was either an employee of the owners of the property, for whom TPS was merely acting as agent, or was an independent contractor. TPS also points out that neither Masoud Shahrvand or Darryl Adams are employees, officers, directors or have any direct or indirect interest or involvement in TPS. TPS says those two persons are owners of the property in Port Alberni for which Crerar was Resident Manager until her termination on July 2, 1996.

ISSUE TO BE DECIDED

The issue is whether Crerar was an independent contractor or an employee and, if the latter, whether TPS was the employer and should be held responsible for length of service compensation and vacation pay.

FACTS

The available facts are scant. It appears from the documentation that for at least 4 years prior to July, 1996, Crerar lived at a condominium or town home complex in Port Alberni called Woodland Village. During that 4 year period of time she performed the services of Resident Manager in relation to the administration of the complex. Her duties included collecting and depositing rents and she received an amount of money each month for the services she performed. For at least the last 3 months prior to July, 1996 the money she received was paid into her personal bank account by TPS. It is not clear on the material what the nature of this payment was or whether it was paid to her by TPS on its own behalf or on behalf of the owners.

Crerar was told on July 2, 1996, in a telephone conversation with Rod Wiens, that her services were no longer required and she was being terminated.

TPS was, at the time Crerar was terminated, the property management company for the owners of the complex and Mr. Wiens was their Manager for the complex. During the investigation by the delegate, Mr. Wiens filed a submission saying he was acting on the instructions of two of three owners, Mr. Shahrvand and Mr. Adams when he terminated Crerar.

It is suggested in the material on file that the ownership of the complex had recently changed hands and TPS had not been engaged for long as the property management company when Crerar was terminated. At approximately the same time as Crerar was terminated the property management contract of TPS was brought to an end.

The reasons, in their totality, given by the delegate for the Determination say:

I have completed my investigation into these allegations. The investigation revealed that the employer had no interest in dealing with this matter. Phone calls to the above named individuals brought no conclusion. A letter from the Port Alberni Property Manager, Mr. Rod Wiens, advised the above mentioned individuals were the principals of the company.

The “above mentioned individuals” referred to in the reasons were Mr. Shahrvand and Mr. Adams. In light of the material on file, two initial comments are appropriate. First, the delegate was never told by Wiens that Shahrvand and Adams were principals of the company. The letter to which the delegate refers says, in part:

. . . I wish to confirm that Theresa Crerar was terminated upon a direct request from two of the three owners of Woodland Village. They are, and can be contacted at:

He then names and provides the telephone numbers for Shahrvand and Adams. Second, there is no documentation on file supporting a conclusion that Shahrvand and Adams were principals of TPS. A company search done by the delegate in August, 1997, after the appeal was filed, revealed neither Shahrvand nor Adams were principals of TPS, either at the time the complaint arose, at the time the Determination was made or at any other time.

Even though Crerar worked at the complex for 4 years, there is nothing on file indicating when, how or by whom Crerar was hired or, during the 4 years, who supervised her work or to whom she reported. No T4 slips (if she was issued any T4 slips) were sought or provided, even though they might have assisted in identifying either or both the employer and the fact of employment. Similarly, no Record of Employment, which is required to be issued to an employee upon termination of employment, appears on file. Nor is there any other similar documentation supporting a conclusion of employment, either generally or with TPS.

As stated earlier, it appears the complex had just been purchased by Shahrvand, Adams and another person, Frank Redenback, shortly before Crerar was terminated and TPS also had only recently become involved in the management of the complex. While no direct conclusion to this effect is found in the Determination, the material on file suggests the delegate concluded Section 97 of the *Act* applied in the circumstances. That conclusion was reached without the benefit of determining what business was disposed of, what relationship Crerar had to that business and who assumed the business. That conclusion also fails to consider either the question of whether Crerar had employment with that business and, if there was employment, the identity of the employer. All those matters would appear to be important in light of what seems to have been the recent involvement by TPS in managing the complex.

ANALYSIS

Section 81(1)(a) of the *Act* reads:

81. (1) On making a determination under this Act, the director must serve any person named in the determination with a copy of the determination that includes the following:
- (a) the reasons for the determination;

The reasons provided by the delegate in this case do not meet that statutory requirement. At a minimum, the delegate should have set out the reasons for concluding TPS was Crerar's employer and under what provision or provisions of the *Act* it was liable to her. This requirement is not merely technical, but is fundamental to a proper administration of Part 13 of the *Act*, including the Rules of Procedure of the Tribunal. The Tribunal has established, in part, a requirement for appellants to identify the specific determination being appealed and to describe the reasons for the appeal. Without comprehensible reasons, these requirements are difficult to address. More substantively, it has recently been stated by the Tribunal in **Ray Chamberlin and Sandy Chamberlin, operating as Super Save Gas**, BC EST #D374/97, August 18, 1997, at page 7:

. . . the principles of natural justice also speak in favour of there being clear set out reasons within the Determination.

It is fundamental to the concept of natural justice that a person determined to be liable for a contravention of the *Act* have a clear understanding about the reasons why the delegate reached that conclusion. That information is basic to knowing the case they have to meet if they choose to exercise their right to appeal that conclusion.

So there is no misunderstanding, the Tribunal is sensitive to the pressures and responsibilities of a delegate investigating complaints under the *Act*. Circumstances often dictate that the reasons

given for the conclusions reached in a determination will be brief. The Tribunal will continue to give a broad and sympathetic reading those determinations when considering whether it contains sufficient reasons to satisfy the requirements of Section 81(1)(a) of the *Act*. In this case however, I cannot find that a reasonably informed layperson, familiar with the contents of the file, could understand why the delegate concluded TPS was responsible to Crerar under the *Act* for length of service compensation and vacation pay.

ORDER

Pursuant to Section 115(1)(b) of the *Act*, I order the matter be remitted back to the Director for further investigation and to address the deficiencies in the reasons given for the Determination.

.....
David Stevenson
Adjudicator
Employment Standards Tribunal