



An appeal

- by -

Kimberley D. Keraiff
("Keraiff")

- 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: David B. Stevenson

FILE No.: 2001/405

DATE OF DECISION: September 12, 2001

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Kimberley D. Keraiff (“Keraiff”) of Determination issued May 4, 2001 by a delegate of the Director of Employment Standards (the “Director”).

Keraiff had filed a complaint with the Director alleging she was entitled to length of service compensation under Section 63 of the *Act* alleging her employer, The Union of Spiritual Communities of Christ operating as U.S.C.C. Preschool operating as Children’s Orchard Russian Preschool (“USCC”) had terminated her employment without notice and without compensation for length of service in lieu of notice.. The Determination concluded that Keraiff was employed for a definite term and was not entitled to length of service compensation.

Keraiff challenges that conclusion.

ISSUE

The issue is whether Keraiff has shown the conclusion of the Director, that she was not entitled to length of service compensation under the *Act*, was wrong.

FACTS

Keraiff was employed as a pre-school teacher at USCC for five years under a series of contracts which commenced just prior to the beginning of the school year, usually mid-September, and was completed in mid-June, just after the school year ended.

In May, 2000, Keraiff was invited by the USCC Executive to re-apply for the pre-school teacher position for the term commencing September, 2000. On May 15, 2000, Keraiff sent a letter to the Executive Committee, asking why she needed to re-apply for the position of pre-school teacher. In a reply, dated May 18, 2000, Barbie Kalmakoff, the Chair of the Executive Committee, expressed some surprise with the inquiry, stating:

My surprise stems from two reasons, the first being that you did not simply ask myself or another executive member informally for a response but instead immediately pursued this matter in such an official manner and secondly, because this invitation has been offered to you at the end of each school year since your initial employment with the preschool.

Mrs. Kalmakoff then provided the rationale for providing Keraiff with an invitation to apply for the position. In the course of the letter, she included the following:

. . . I must stress once again that your teaching contract expires at the end of this school year and if you are interested in teaching again in the fall I must have your application to present to the preschool executive.

Keraiff unsuccessfully applied for the position. She filed a complaint with the Director claiming length of service compensation.

The Determination concluded that Keraiff was employed for a definite term and under Section 65 of the *Act*, was not entitled to the benefit provided in Section 63 of the *Act*. There arose, during the investigation, an issue about whether Keraiff had signed a contract for the term commencing September 14, 1999 and ending mid-June, 2000. The Determination had the following to say on that issue:

The Director's delegate finds on the balance of probabilities that, whether the complainant actually signed the contract or not, the complainant was aware that the basis upon which she was employed was for a one-year definite term . . .

ARGUMENT AND ANALYSIS

A substantial part of the appeal deals with the factual issue of whether or not Keraiff signed a definite term contract for the term commencing September, 1999 and ending June, 2000. During the investigation there was a form of contract covering that period provided to the Director from the USCC with what appeared to be Keraiff's signature on it. Keraiff suggests that her signature was forged. USCC emphatically denies that suggestion. I do not need to resolve that factual dispute, as Keraiff does not contest the conclusion that she was employed for a definite term. That conclusion is, in any event, amply supported by the material on file. In her final submission to the Tribunal, Keraiff says:

I have never denied or mentioned anywhere that I was not aware of a contract! I had signed contracts, but I also did not sign contracts as I was asked verbally every year, "are you coming back next year?" I never had to reapply for my position until my co-worker Debbie Rybalka informed the executive that she was resigning.

. . .

I have never mentioned or disputed the fact that the position was not a year to year basis.

The applicable provision of the *Act* is Section 65(1)(b), which states:

65. (1) *Sections 63 and 64 do not apply to an employee*

...

(b) *employed for a definite term*

I agree with the submission of the Director on this appeal. Whether Keraiff actually signed the contract for the 1999 - 2000 school term is a minor point in the circumstances, as it was clear her employment was for a definite term and she was aware of that fact.

Keraiff has not demonstrated the conclusion of the Director that she was not entitled to length of service compensation under Section 63 of the *Act* was wrong. The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated May 4, 2001 be confirmed.

David B. Stevenson
Adjudicator
Employment Standards Tribunal