

An appeal

- by -

P.G. Portable Chipping Ltd.
("P.G. Ltd.")

- 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: Ian Lawson

FILE No.: 2002/387

DATE OF HEARING: October 29, 2002

DATE OF DECISION: November 5, 2002

DECISION

APPEARANCES:

For the Appellant: Karen Flynn, for P.G. Portable Chipping Ltd.
The Respondent: no appearance
For the Director of Employment Standards: no appearance

OVERVIEW

This is an appeal by P.G. Portable Chipping Ltd. ("P.G. Ltd.") pursuant to s. 112 of the *Employment Standards Act* ("Act"). The appeal is from a Determination issued by John Dafoe as a delegate of the Director of Employment Standards on June 26, 2002. The Determination found P.G. Ltd. liable to pay compensation for length of service and interest to former employee Vaughn Steeves ("Steeves") in the total amount of \$768.56. P.G. Ltd. filed an appeal on July 18, 2002. An oral hearing was held at Smithers, B.C. on October 29, 2002.

FACTS

There is no dispute on the facts in this case. P.G. Ltd. performs site clearing work following logging activity, and Steeves was hired to operate an excavator on July 26, 2001. He was not hired for any definite term of employment, and he travelled to various remote logging sites to perform his work. P.G. Ltd. gave verbal notice to Steeves that he was "laid off," and his last day of work was October 30, 2001. By this date, weather no longer permitted site clearing to continue. P.G. Ltd. says Steeves's employment was not terminated; he was merely laid off as is the custom in that type of employment when winter weather sets in. It is not disputed that there was no other work that P.G. Ltd. required Steeves to perform throughout the winter. P.G. Ltd. says Steeves and its other employees not only expected this "lay off" but were told about it regularly. Steeves was not called back to work at any later date, although the employer did have a single excavator operating at sites occasionally through the winter. P.G. Ltd. does complain that Steeves was absent from work on several occasions during his last month of employment, but on each occasion his absence was not made the subject of any discipline, nor was it made clear to him that he was not allowed to be absent without prior notice.

ISSUE TO BE DECIDED

The issue in this appeal is whether P.G. Ltd. is required to pay compensation for length of service to Steeves.

ANALYSIS

The *Act* contains the following definitions:

“temporary layoff” means

- 1) in the case of an employee who has a right of recall, a layoff that exceeds the specified period within which the employee is entitled to be recalled to employment, and
- 2) in any other case, a layoff of up to 13 weeks in any period of 20 consecutive weeks;

“termination of employment” includes a layoff other than a temporary layoff;

Section 63 of the *Act* contains the following provisions:

- 63 (1) After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week’s wages as compensation for length of service.

...

- (3) The liability is deemed to be discharged if the employee
- (a) is given written notice of termination as follows:
 - (i) one week’s notice after 3 consecutive months of employment;

...

- (5) For the purpose of determining the termination date, the employment of an employee who is laid off for more than a temporary layoff is deemed to have been terminated at the beginning of the layoff.

The Director’s Delegate applied the above provisions and having found that Steeves was employed for at least 3 consecutive months, concluded that he had in fact been terminated on the date of his “layoff.” Mr. Dafoe found that Steeves had not been hired for a definite term or for specific work within the meaning of section 65 of the *Act*. Mr. Dafoe found no merit to P.G. Ltd.’s allegation that it had just cause to terminate his employment on account of his absences from work.

At the hearing of its appeal, P.G. Ltd. argued that Steeves had not been terminated, but merely laid off. P.G. Ltd. clearly lacked a basic understanding of its liability when it runs out of work for an employee who has worked 3 consecutive months. P.G. Ltd. further lacked understanding of how to meet its liability: simply by giving one week’s written notice that the employment will terminate (or alternatively, if it is truly laying off that employee, ensuring that there is a call back to work within the ensuing 13 weeks). I therefore find no merit whatsoever to the appeal.

ORDER

After carefully considering the evidence and argument, I find that the Determination made by Mr. Dafoe is correct and the appeal should be dismissed. Pursuant to section 115 of the *Act*, I order that the Determination dated June 26, 2002 be confirmed, with interest pursuant to section 88 of the *Act*.

Ian Lawson
Adjudicator
Employment Standards Tribunal