

An appeal

- by -

Peter Turgeon
(the “Appellant” or “Employee”)

- 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: Ib S. Petersen

FILE No.: 2002/447

DATE OF HEARING: November 12, 2002

DATE OF DECISION: November 13, 2002

DECISION

APPEARANCES:

Mr. Peter Turgeon

No one appeared on behalf of the Employer

OVERVIEW

This is an appeal by the Employee, pursuant to Section 112 of the *Employment Standards Act* (the “Act”), of a Determination of the Director issued on August 12, 2002. The Determination concluded that Turgeon was owed \$670.75 on account of compensation for length of service.

According to the Determination, Turgeon worked for Ikor Enterprises Ltd. (“Ikor” or the “Employer”) from January 2, 2001 to September 14, 2001 as a “chopper” at the rate of \$15.50 per hour. The Delegate found that he was laid off temporarily and not recalled to employment and awarded one week’s pay as compensation for length of service. The Employer did not participate in the investigation.

FACTS AND ANALYSIS

As the Appellant, Turgeon has the burden to persuade me that the Determination is wrong. For the reasons set out below, I am not persuaded that he has discharged that burden.

The appeal centres around whether or not the time worked for another company ought to be counted towards his entitlement to compensation for length of service and that he is entitled to not one, but seven weeks’ pay. Turgeon argues that the time he worked for the other company, Nakor Lumber Products Inc. (“Nakor”), from July 5, 1993 until October 13, 2000 not only counts towards his entitlement to compensation for length of service, but that Ikor is liable. Ikor, not surprisingly, takes the position that it is only liable for the shorter period as determined by the Delegate. At the hearing, Balwant Dhanoa, the Ikor representative, explained that this amount has been paid to the Director in trust. From the Employer’s standpoint, it is not responsible for Turgeon’s employment with Nakor.

In his appeal submission, Turgeon explains that he was advised by the Delegate, who handled his complaint with respect to his termination from Nakor, that unless he accepted employment with Ikor he would “forfeit any severance from Istvan Kordelyos” (“Kordelyos”). He says, in his submission, that the only reason he accepted employment with Ikor was her “ultimatum.” He commenced employment there on January 2, 2001. It is clear that Turgeon was not satisfied with the manner in which the Employment Standards Branch handled his complaint with respect to his termination from Nakor.

At the hearing, Turgeon and a friend, Glenn Cox, testified on his behalf. Balwant Dhanoa testified on behalf of Ikor. All witnesses testified under affirmation. In any event, the material facts are not seriously in dispute.

Based on the evidence before me at the hearing, the following are the relevant facts:

- Turgeon was laid off from Nakor, which, at the time, was owned by Kordelyos. He was laid off October 13, 2000. At that time Nakor ceased operations.

- Kordelyos also owned Ikor (together with his wife).
- Immediately after his layoff, Turgeon filed a complaint with the Employment Standards Branch with respect to his termination.
- Prior to Nakor ceasing operations, on September 30, 2000, Kordelyos sold Nakor to Dhanoa and a business associate, Iqbal Deol, via a 100% share transfer. Kordelyos and his wife resigned as directors and officers of the Ikor and Dhanoa and Deol were appointed.
- There was no sale of Nakor to Ikor. The two businesses were separate entities, though, apparently, they were in the same business, custom cutting lumber.
- Turgeon worked for another employer in November-December 2000, Landmark Timber.
- As mentioned, Kordelyos sold Ikor, but stayed on, in the Delegate's view, as manager. Ikor agrees that he worked for it--but as a "sub-contractor," not a manager or employee.
- Turgeon urged the Delegate to deal with his layoff from Nakor expeditiously. He was concerned that he (and other employees) would be left without a remedy. He stated that he was concerned that the Employment Standards Branch would not deal with his complaint until the expiry of the temporary layoff.
- Turgeon explained that he was told that the Delegate spoke with Kordelyos and that the latter offered "continuous employment" with Ikor. At the end of November, Turgeon says he accepted employment there. He did so, he says, because the Delegate told him that he would not be entitled to any severance unless he accepted Kordelyos offer.
- Turgeon believed that he would get credit for his entire service with Nakor and withdrew his complaint with respect to the termination of his employment with Nakor. The Delegate confirmed this in writing on November 30, 2000:

"Since you have accepted an offer of employment from Istvan Kordelyos, the owner of Nakor, to work at another business and that you do not wish to pursue this complaint any longer, I have closed your complaint and will take no further action on your behalf."
- Dhanoa says that Turgeon commenced employment with Ikor on January 2, 2001. Kordelyos introduced him as the "new owner of the company." He says that Ikor needed a new "chopper" in December 2000 and that Kordelyos mentioned Turgeon.
- Turgeon's employment with Ikor came to an end September 14, 2001.

Section 63 of the *Act* provides for compensation for length of service based on "consecutive" months or years of employment. He is, thus, clearly entitled to the one week's pay as set out in the Determination.

In this case, Turgeon's last day at work with Nakor was October 13, 2000, when he was laid off. His temporary layoff became a deemed termination 13 weeks after that date, effective October 13, 2000 because he had not been recalled (see Section 63(5) and Section 1 "temporary layoff"). The period would expire after he first week of January 2002.

On October 13, however, Kordelyos was no longer the “owner” of Ikor. It had been, and that fact is not in dispute, been sold to Dhanoa and Deol on or about September 30, 2000. As of that date, as well, Kordelyos and his wife were replaced as directors and officers of Ikor. Before January 2, 2001, Turgeon had not at any time worked for Ikor. The only nexus between Nakor and Ikor is that they were “owned” by the same person. There is, I hasten to add, nothing before me to suggest that the sale of the business was not entirely bona fides. The business of Nakor was not sold or transferred to Ikor. There has been no finding that the two were associated corporations within the meaning of the *Act* (see Section 95). In fact, given the sale of the business on September 30, it is doubtful that such a finding could be made. On that basis, I do not think that Ikor can be held liable for Turgeon’s service with Nakor. The Delegate, who dealt with the Ikor complaint, awarded him one week’s pay as compensation for length of service. In my view, she was correct.

I understand Turgeon’s position that he was acting on the advice of the Delegate (in the Nakor matter) and that he “believed”--and I do not think the evidence is any stronger--that he would get “credit” for his service with Nakor. It appears that the Delegate in the Nakor matter was mistaken as to the identity of the owner of the business offering Turgeon employment. She appears, from the letter cited above, to have been of the view that Ikor was owned by Kordelyos. On the evidence before me, that was clearly not the case. Turgeon says she should have questioned or dealt with the “new” owners. In any event, in my view, whatever advice the Delegate may have dispensed, that is not a relevant consideration, and does not support a claim against Ikor.

In his appeal, and at the hearing, Turgeon raised a number of questions relating to the manner in which the Employment Standards Branch dealt with his complaint, including why the Employment Standards Branch did not immediately deal with his complaint. He clearly wanted answers to those questions. Unfortunately, I am not in a position to answer those questions.

In all of the circumstances, and the evidence before me, I am not persuaded that the Delegate erred in her conclusions and, therefore, the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated August 12, 2002, be confirmed.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal