Employment Standards TRIBUNAL

An appeal

- by -

Michael Charles McKee and Alexander James Boyce Wardle,
operating as Valhalla Services

(the "Employer")

- 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: M. Gwendolynne Taylor

FILE No.: 2002/479

DATE OF DECISION: December 2, 2002

DECISION

OVERVIEW

Pursuant to section 112 of the *Employment Standards Act*, Michael Charles McKee and Alexander James Boyce Wardle, operating as Valhalla Services, (the "employer") filed an appeal from a Determination by the Director of Employment Standards (the "Director") dated August 26, 2002, concerning a complaint by a former employee, Gary Wong (the "employee"). The Director's delegate found that the employer had contravened section 63(2) of the Act by failing to pay compensation for length of service. The Director ordered the employer to pay $1,982.72, which included interest.

On August 31, 2002, the employer appealed the Determination on the grounds that the employer had complied with the intent of the *Act* and the employee was using a technicality to extort funds.

ISSUE

The sole issue is whether the employer's oral notice of termination was sufficient to discharge the liability for compensation for length of service under section 63.

BACKGROUND

The employer operates a call centre for rubbish removal. The employee worked for the employer from October 2, 2000 to May 17, 2002, at the rate of $2,050 semi-monthly. The director's delegate interviewed the employee, the employer and one other employee. The delegate determined that the employer had provided an oral termination notice to the employee but had not provided a written notice. The delegate interpreted section 63(3) as requiring written notice to discharge the liability to pay compensation,

The employer argued that it complied with the intended purpose of the legislation by giving the employee ample notice of termination, although not in writing.

ANALYSIS

Section 63 of the *Act* provides:

> **Liability resulting from length of service**
>
> **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.
>
> (2) The employer's liability for compensation for length of service increases as follows:
>
> (a) after 12 consecutive months of employment, to an amount equal to 2 weeks' wages;
>
> (b) after 3 consecutive years of employment, to an amount equal to 3 weeks' wages plus one additional week's wages for each additional year of employment, to a maximum of 8 weeks' wages.
>
> (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;
(ii) 2 weeks' notice after 12 consecutive months of employment;
(iii) 3 weeks' notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 weeks' notice;

(b) is given a combination of notice and money equivalent to the amount the employer is liable to pay, or

(c) terminates the employment, retires from employment, or is dismissed for just cause.

(4) The amount the employer is liable to pay becomes payable on termination of the employment and is calculated by

(a) totalling all the employee's weekly wages, at the regular wage, during the last 8 weeks in which the employee worked normal or average hours of work,

(b) dividing the total by 8, and

(c) multiplying the result by the number of weeks' wages the employer is liable to pay.

(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 Tribunal has long held that oral notice is insufficient to meet the requirements of Section 63(3). In a recent case, *453428 B.C. Ltd. (c.o.b. Bagel Street Café) (Re)* [2002] B.C.E.S.T.D. No. 405, Adjudicator Edelman stated:

> In my view, it is not necessary to resolve the factual dispute about whether verbal notice was given or not. The Tribunal has consistently held, and I completely agree, that the requirement for written notice under the Act cannot be satisfied by an equivalent amount of verbal notice. (See Sun Wah Supermarket Ltd. BC EST # D324/96; Jual Furniture BC EST # D358/01). Therefore, even if verbal notice was given to Levasseur on January 14 that her last day of work would be 3 weeks following January 14, the notice has no effect.

Similarly, in this case, the oral notification has no legal effect. The employer's appeal cannot succeed.

ORDER

Pursuant to section 115 of the *Act*, I confirm the Determination issued August 26, 2002.

M. Gwendolynne Taylor
Adjudicator
Employment Standards Tribunal