

**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 -

Sophie Investments Inc.  
("Sophie")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Ian Lawson

**FILE NO.:** 97/602

**DATE OF DECISION:** January 7, 1998

## DECISION

### OVERVIEW

This is an appeal by Sophie Investments Inc. ("Sophie") pursuant to section 112 of the *Employment Standards Act* (the "Act"). The appeal is from Determination No. CDET 006615 issued by Ian MacNeill, a delegate of the Director of Employment Standards on July 18, 1997. The Determination required Sophie to pay wages and holiday pay to Shirley Forget in the total amount of \$2,087.02.

Sophie filed an appeal on August 7, 1997. The appeal is now decided without an oral hearing, on the basis of written submissions and the record before the Tribunal.

### FACTS

Sophie owns an apartment building in Victoria, B.C. and employed Ms. Forget as the resident caretaker from May 25, 1996 to November 20, 1996. A written contract was entered into by the parties, which provided that Ms. Forget would be paid a monthly wage of \$1,192.80, but \$320.00 of that amount would be allocated to payment of rent for Ms. Forget's suite, which was described in the agreement as a "free" suite valued at \$320.00. An additional \$57.20 was paid as compensation for extra hours that might be worked each month. The agreement provided that Ms. Forget was not to work on statutory holidays.

After the termination of her employment, Ms. Forget filed a complaint with the Director that she had not been paid the minimum wage required for "resident caretakers" under section 17 of the *Employment Standards Regulation* ("Regulation"). She also complained that she had not been paid overtime for the July 1, 1996 statutory holiday, which occurred on the first day of the month when she was required to be available to receive rent payments and arrange for new tenants to move into the building.

Ms. Forget also made a complaint that she had not been paid wages for the five days she worked prior to signing her employment contract, from May 26 to May 31, 1996. It appears the previous caretaker had terminated her employment on May 26, 1996, and these days were the intervening period until Ms. Forget entered into a written employment contract. Sophie alleges that Ms. Forget did not perform any duties during this period, as another caretaker had been arranged to handle matters at the building for which Ms. Forget was hired. Sophie also alleges that this complaint was filed beyond the 6-month time limitation under s. 74(3) of the Act.

### ISSUE TO BE DECIDED

This appeal requires me to decide whether Sophie had failed to pay to Ms. Forget the minimum wage for resident caretakers and overtime pay for a statutory holiday, as well as whether she is entitled to wages for the period May 26 to May 31, 1996. I must also decide whether Ms. Forget's complaint was filed within the statutory limitation period.

## ANALYSIS

For the reasons set out in B.C.E.S.T. No. D527/97 decided today, I find that Ms. Forget had given Sophie a written assignment of her wages to meet a "credit obligation," being her monthly rent payable to Sophie. The circumstances of Ms. Forget's employment are the same as those considered in B.C.E.S.T. No. D527/97, as Ms. Forget's written employment contract is identical in its terms to the one considered in that decision, and the nature of her complaint about statutory holiday pay is similar in nature to the complaint in that decision. For the reasons set out in B.C.E.S.T. No. D527/97, therefore, I find that Ms. Forget was required to work on those statutory holidays that fell on the first day of the month and the Determination is correct in that regard.

Sophie has raised in this appeal a new issue which was not necessary to decide in B.C.E.S.T. No. D527/97: whether Ms. Forget's complaint was filed in time. Section 74(3) of the Act reads as follows:

74. (3) A complaint relating to an employee whose employment has terminated must be delivered under subsection (2) within 6 months after the last day of employment.

It appears from the record that Ms. Forget's complaint was filed on January 6, 1997. I note that on April 24, 1997 Mr. MacNeill declined to provide Sophie with a copy of this complaint in response for Sophie's written request for a copy of this document, which is regrettable. It is not disputed that Ms. Forget's employment by Sophie was terminated on November 20, 1996. Ms. Forget would then have until May 20, 1997 to file a complaint regarding her employment, and I find that the complaint giving rise to this appeal was filed in time.

With regard to the claim for wages for the period May 26 to May 31, 1996, the Determination relates in detail the findings of fact made by Mr. MacNeill. Sophie's submission is that Ms. Forget would not have been expected to commence work on May 26, 1996, and that in any event she would not have been trusted to commence employment at that time because she was not familiar enough with the building and Sophie's procedures. Sophie's submission, however, contains the following paragraph:

When some tenants came at the end of May to the manager's door with their rent cheque, Mrs. Forget was probably eager to show her competence and so she wrote the receipts. She could as well have told the tenants: "I am not available immediately, could you come back on June 1st". The company would not have lost any money.

I find this statement to be an admission by Sophie that Ms. Forget was in the building and acted in the capacity of manager at the end of May, 1996. I am not satisfied that Sophie has cast sufficient doubt on Mr. MacNeill's findings of fact, and I dismiss the appeal in this regard.

**ORDER**

After carefully considering the evidence and argument, I find that the appeal should be allowed in part and the Determination made by Mr. MacNeill should be varied. Pursuant to section 115 of the Act, I confirm only that part of the Determination which awards Ms. Forget wages and statutory holiday pay in the amount of \$344.10, together with 4% vacation pay on this amount and interest pursuant to s. 88 of the Act. I cancel that part of the Determination which awards Ms. Forget wages in the amount of \$1,600.00 and interest on that amount. Vacation pay at 4% plus interest is due to the employee on the amount of \$1,600.00, unless Sophie can satisfy the Director on or before January 12, 1998 that proper vacation pay had been paid to Ms. Forget, in which case by agreement of the parties this part of my order will be of no effect. I make this order because it is not completely clear to me whether Sophie had paid vacation pay on the full amount of Ms. Forget's monthly wage. I grant leave to Sophie or the Director to seek a further order should they be unable to agree on the amount of vacation pay owed, or whether the correct amount has already been paid to Ms. Forget.

**Ian Lawson  
Adjudicator  
Employment Standards Tribunal**