

An appeal

- by -

Catherine Richard
("Richard")

- 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: Kenneth Wm. Thornicroft

FILE No.: 2002/522

DATE OF DECISION: December 17, 2002

DECISION

PREVIOUS PROCEEDINGS

On August 28th, 2002 I heard three separate appeals all of which were filed pursuant to section 112 of the *Employment Standards Act* (the “Act”). Paradigm Management (B.C.) Ltd. operating as “Expressions Hair Design” (“Expressions Hair”)--EST File No. 2002/301--and Catherine Richard (“Richard”)--EST File No. 2002/302--each appealed a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on May 7th, 2002 (the “Determination”). In addition, Expressions Hair also appealed a \$300 penalty determination (EST File No. 2002/300) although this latter determination is not germane to the present proceedings (see B.C.E.S.T. Decision No. D427/02).

In reasons for decision issued on September 19th, 2002 (B.C.E.S.T. Decision No. D428/02) I held that the appeal filed by Expressions Hair was not properly before the Tribunal and, accordingly, I dismissed that appeal pursuant to section 114(1)(c) of the *Act*. By way of the same reasons for decision, I allowed Ms. Richard’s appeal. In particular, I held that Ms. Richard did not “quit” or otherwise “abandon” her employment and thus, given her tenure, was entitled to 8 weeks’ wages as compensation for length of service (see section 63 of the *Act*). In the absence of adequate payroll information, I made the following Order:

ORDER

...Pursuant to section 115(1)(a) of the *Act*, I order that the Determination be varied to indicate that Expressions Hair must pay Ms. Richard 8 weeks’ wages as compensation for length of service together with additional interest to be calculated in accordance with section 88 of the *Act*.

I am unable to determine, based on the material before me, Ms. Richard’s precise monetary entitlement. Accordingly, this latter matter is referred back to the Director solely for the purposes of calculating Ms. Richard’s monetary entitlement.

THE DELEGATE’S REPORT

In accordance with my direction, the delegate undertook the necessary review of the relevant payroll records and determined that Ms. Richard was entitled to \$1,905.24 on account of 8 weeks’ wages, a further \$114.31 on account of 6% vacation pay, and \$252.47 representing accrued section 88 interest as of October 4th, 2002. Thus, the delegate concluded that Ms. Richard’s total entitlement (as of October 4th, 2002) was \$2,272.02.

On October 4th, 2002, the delegate forwarded a copy of her calculations (and an accompanying explanation regarding how the amounts were derived) to Expressions Hair (the delegate’s October 4th letter was also copied to Ms. Richard with the note “for your comments please”). The delegate asked Expressions Hair’s principal, Mr. Blair Christie, to “review the calculation and either send me your cheque payable to Catherine Richard, or if you disagree with how the wages were calculated, send me your calculation and an explanation of how you computed it”.

On October 16th, 2002 Mr. Christie faxed a letter to the delegate in which he advised that he had applied for reconsideration and that “it would be imprudent of me to provide you with funds until all relevant matters are resolved”. In his October 16th letter Mr. Christie neither agreed nor disagreed with the delegate’s calculations; he simply said nothing about that matter. Ms. Richard, for her part, advised the delegate that she agreed with the calculations.

FINDINGS

In the absence of an agreement between the parties with respect to Ms. Richard’s monetary entitlement under section 63 of the *Act*, the delegate forwarded a report to the Tribunal, dated October 17th, 2002, setting out her calculations for purposes of review by the Tribunal. In turn, the Tribunal’s vice-chair forwarded the delegate’s report to the parties for their review and comment--a deadline was fixed for submitting comments, namely, November 7th, 2002.

Ms. Richard did not challenge the delegate’s report.

Mr. Christie, for Expressions Hair, forwarded five separate letters to the Tribunal, dated November 4th, 6th (2 letters), 19th and 29th, 2002. In his various correspondence Mr. Christie states that:

- he does not propose to comment on the delegate’s calculations until his application for reconsideration is dealt with (November 4th); and
- “Having reviewed the calculation of wages owed, I have no reason to believe that the Delegate has approached her duty with anything other than the integrity and attention to detail that she has demonstrated in the past” (November 6th); I take this latter comment to be an endorsement of the delegate’s calculations. However, Mr. Christie also reiterated his request that his reconsideration application be addressed prior to the matter of the calculations.

None of Mr. Christie’s other communications address the correctness of the delegate’s calculations in any fashion and, in general, simply record Mr. Christie’s objections to the dispute resolution process followed by the Tribunal and reiterate his demand that his application for reconsideration be addressed prior to the matter of the correctness of the delegate’s calculations.

I have reviewed the delegate’s calculations and they appear to be in order. Ms. Richard accepts that they are correct. Mr. Christie either agrees with the calculations (while still denying his liability to pay any compensation for length of service) or takes no position--his submissions are not entirely consistent.

In any event, I am satisfied that the Determination should be varied to indicate that Expressions Hair must pay Ms. Richard compensation for length of service in the amount as calculated by the delegate.

ORDER

Pursuant to section 115(1)(a) of the *Act*, I order that the Determination issued on May 7th, 2002 be varied to indicate that Expressions Hair is ordered to pay Catherine Richard the sum of \$2,019.55 on account of 8 weeks' wages as compensation for length of service and concomitant vacation pay. In addition, Ms. Richard is entitled to interest on the foregoing sum to be calculated in accordance with the provisions of section 88 of the *Act* as and from August 6th, 2000.

In all other respects, the Determination is confirmed.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal