

An appeal

- by -

Bernard Pelletier  
("Pelletier")

- 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:** Carol L. Roberts

**FILE No.:** 2001/594

**DATE OF DECISION:** October 22, 2001

## DECISION

This is a decision based on written submissions by Bernard Pelletier on his own behalf, Craig Paterson on behalf of Oaxaca Law Corporation dba Paterson & Associates, and Sharon L. Cott, on behalf of the Director of Employment Standards.

### OVERVIEW

This is an appeal by Bernard Pelletier ("Pelletier"), pursuant to Section 112 of the Employment Standards Act ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued July 19, 2001. The Director found that Pelletier had not substantiated his claim for vacation pay against Paterson & Associates ("Paterson"), and closed the file.

### ISSUE TO BE DECIDED

At issue is whether the Director erred in failing to properly interpret and apply sections 57 and 58 of the Act.

### FACTS

Pelletier worked as a legal assistant with Paterson from July 1, 1996 to January 31, 2001. He claimed that he did not receive vacation time from July 2000 to January 31, 2001. In subsequent communication with the delegate, the delegate stated that Pelletier admitted taking a vacation in July 2000, but denied taking a vacation in 1999. In a telephone conversation with the delegate after the complaint was filed, the delegate stated that Pelletier admitted that he received vacation time off every year but the period July 2000 to June 2001.

Paterson denied that Pelletier was owed any vacation pay, and contended that Pelletier received paid vacation time during each year of his employment, including his last year, and that he received 3 weeks vacation during August 2000 and a further 3 days at Christmas, 2000.

During the investigation of this complaint, the delegate sent a letter to Pelletier on June 28, 2001, indicating that, because he signed an employment contract commencing July 1, 1996, his vacation entitlement was based on one year periods from that date. The letter further stated that there was no dispute that Pelletier took all of the vacation time he was entitled to each year. The delegate stated that in two telephone conversations, Pelletier admitted taking 3 weeks paid vacation in July 2000. She further states that Mr. Paterson indicated that Pelletier took 3 weeks off in August, and that another employee of the firm supported this assertion. The letter continued by stating that if Pelletier received his full 3 weeks vacation in July/August 2000, he received more paid vacation time than he was entitled to. Since he did not work for the entire period July 1, 2000 to June 31, 2001, he was not entitled to the full 3 weeks vacation that year.

No written records were received indicating Pelletier's vacation time. However, based on submissions and admissions from Pelletier, the delegate concluded that Pelletier had in fact taken his vacation time, and that the claim was not substantiated.

## **ARGUMENT**

Pelletier claims that the delegate erred by determining vacation time on a calendar year, contending that the Act must be read to create vacation entitlement according to a yearly anniversary date. He argues that the delegate failed to consider the period July 2000 - January 2001 as being "days of employment" during the entitlement year of employment, and that the conclusion that the vacation taken in July 2000 constituted the extent of his overall vacation entitlement.

Pelletier denies stating that he did not take a vacation in 1999, and submits that he agreed that he took vacation time that year.

Further, he denies indicating that he took vacation time in each year of employment.

The delegate argues that the determination is correct, and that Pelletier's vacation entitlement commenced on July 1 of each year.

Mr. Paterson states that Pelletier took his vacation in August 2000, and that in fact he paid the cost of Pelletier's ticket to Montreal that month.

## **ANALYSIS**

The burden of establishing that a determination is in error is on the appellant. On the basis of the submissions, I am not persuaded that the burden has been discharged.

Section 57 of the Act provides that

- (1) an employer must give an annual vacation of
  - (a) at least 2 weeks, after 12 months consecutive months of employment, or
  - ....
- (2) An employer must ensure an employee takes an annual vacation within 12 months after completing the year of employment entitling the employee to the vacation.
- ...

There is no evidence supporting Pelletier's contention that the delegate was incorrect. He apparently made inconsistent statements to her, and, following an investigation, she concluded that he had received 3 weeks vacation for the July 2000 - June 31, 2001 year, which was in excess of what he was entitled to, given that he ceased working for Paterson in January 2001.

Although Pelletier states in his letter of appeal that he denies that he took vacation time in each year of employment, in his reply to the delegate some time after June 12, he states that he took 15 days vacation during each of the 96/97, 97/98, 98/99 and 99/00 years. Therefore, I conclude that Pelletier took 15 days vacation during each year of his employment, rather than after 12 months employment. He does not dispute admitting to the delegate in two telephone conversations, one on April 17, 200, the other on June 26, 2001, that he took 3 weeks paid vacation in July, 2000. He also did not dispute Paterson's contention that Pelletier took a 3 week vacation to Montreal in August 2000.

I find no basis to conclude that the delegate erred in finding this 3 week vacation in respect of Pelletier's vacation entitlement for the 2000/2001 year. Consequently, the appeal is denied.

### **ORDER**

I Order, pursuant to Section 115 of the Act, that the Determination dated July 19, 2001 be confirmed.

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**Carol L. Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**