

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 -

355567 B.C. LTD.
("the Company")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	Ian Lawson
FILE No.:	97/647
DATE OF DECISION:	January 5, 1998

DECISION

OVERVIEW

This is an appeal by 355567 B.C. Ltd. (the “Company”) pursuant to s. 112 of the *Employment Standards Act* (the “Act”). The appeal is from a Determination issued by Erwin Schultz, a delegate of the Director of Employment Standards on July 30, 1997. The Determination required the Company to pay wages, termination pay and vacation pay to 13 former employees in the total amount of \$22,026.02.

The Company filed an appeal on August 25, 1997. The Tribunal allowed an extension of time to that date to permit the appeal to be heard. The appeal is now decided without an oral hearing, on the basis of written submissions and the record before the Tribunal.

FACTS

The Company carried on business as Revelstoke Cedar Products, which operated a cedar remanufacturing plant in Revelstoke, B.C. On February 7, 1997, the Company terminated 13 workers on account of financial difficulties which the Company was experiencing. The employees filed complaints with the Director that some of them had not been paid wages for a period prior to termination, and that they had not received termination pay or holiday pay. The Determination directed that wages and vacation pay be paid in various amounts to each employee, and that compensation for length of service be paid to each employee for service prior to February 7, 1997.

ISSUE TO BE DECIDED

This appeal requires me to decide whether the Company must pay wages, termination pay and vacation pay to the 13 terminated employees.

ANALYSIS

In its submission, the Company admits that the amounts set out in the Determination for wages and vacation pay are correct and no issue is taken on the appeal regarding these sums. The Company disagrees, however, with the award of compensation for length of service. Its submission in this regard is very brief and may be summarized as follows: the Company terminated its operations when financial difficulties rendered it likely that employee wages could no longer be paid; the Company now says it cannot afford any further compensation to these employees other than the wages and vacation pay it agrees is owing to them.

The *Act* defines minimum standards of compensation for employees which includes termination pay in certain circumstances. These circumstances are set out in section 63 as follows:

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 Determination found that all employees had been terminated for longer than 13 weeks and so the termination of these employees does not fall within the definition of "temporary layoff" under the *Act*.

Financial difficulties faced by an employer do not diminish in any way the employer's obligation to meet the minimum standards of compensation set out in the *Act*. The *Act* affords no relief to employers experiencing financial difficulties and so the Company's submission regarding

termination pay has no merit. As no issue is taken with the calculation of termination pay contained in the Determination, I find that the Determination contains no error and the appeal should be dismissed.

ORDER

After carefully considering the evidence and argument, I find that the Determination made by Erwin Schulz is correct and the appeal should be dismissed. Pursuant to s. 115 of the *Act*, I order that the Determination dated July 30, 1997 is confirmed.

Ian Lawson
Adjudicator
Employment Standards Tribunal