

An appeal

- by -

Genesis Industries Corporation

- 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: John M. Orr

FILE No.: 2001/638

DATE OF DECISION: December 6, 2001

DECISION

OVERVIEW

This matter involves an appeal filed by Genesis Industries Corporation (“Genesis”) pursuant to section 112 of the *Employment Standards Act* (“the Act”) from a determination dated August 17, 2001 by the Director of Employment Standards (“the Director”).

The Director found that Genesis owed compensation for length of service to an employee, Chris Brooks (“Brooks”), in the amount of \$3,896.56. The employer did not dispute the amount of compensation but alleged that Brooks was on a temporary lay-off and was recalled to work before the expiration of 13 weeks and that accordingly his employment had not been terminated by the employer.

The Director determined that Brooks had not been recalled to work prior to the expiration of 13 weeks and therefore his layoff was no longer temporary and was deemed to be a termination. The Director found that the employer had sent a letter to the employee shortly before the expiration of the 13 weeks but found that the letter was not a proper recall as it gave no specific date for return to work.

Genesis appeals the Determination. The Tribunal previously decided that it was appropriate that this appeal be decided on the basis of a written decision.

The Tribunal agrees with the Director that the letter did not constitute a proper recall and that the layoff exceeded 13 weeks and was therefore not a temporary layoff. The layoff constituted termination and the employer was liable to pay compensation for length of service.

FACTS AND ANALYSIS

Chris Brooks (“Brooks”) worked for Genesis Industries Corporation (“Genesis”) as a production manager from September 26, 1995 to March 02, 2001 when he was laid off without notice for shortage of work. On June 2, 2001 he received a letter from Genesis offering him the opportunity to apply for job opening at Genesis.

The letter reads as follows:

Dear Sir,

We understand that you have obtained satisfactory employment at Global Plastics. A job opening is available at Genesis Industries and we wish to inform you that you may apply. It may be that this is not ideal for you at this time and we would wish you continued success at Global Plastics.

Sincerely,

A temporary lay-off is defined in the *Act* as a layoff of up to 13 weeks and therefore the lay off in this case, to be a temporary layoff, would have had to end no later than June 1, 2001. There is considerable discussion in the determination and on this appeal about whether

the mailing of the letter by registered mail on May 28, 2001 was within time to have ended the layoff within 13 weeks. However I find that I do not have to address this issue because I agree with the Director that the letter itself does not constitute a recall to Brooks to return to his employment at Genesis. It is merely an invitation to apply for employment.

The Act does not require any specific form or wording to be used but to fall within the definition of a 'temporary layoff' the layoff must actually end before the 13 weeks expires. The letter sent by Genesis on May 28th does not end the layoff. It simply states that there is an opening and that Brooks 'may apply'. Whatever was involved in that application process it was not completed before June 01, 2001 and therefore the layoff was longer than 13 weeks.

I note that Genesis conceded the vacation pay entitlement and therefore I will not address this issue.

I conclude that Genesis has not met the onus of persuading me that the determination was wrong and therefore I find that it should be confirmed.

ORDER

Pursuant to section 115 of the *Act* I order that the Determination dated September 13, 2001 is confirmed.

John M. Orr
Adjudicator
Employment Standards Tribunal