Employment Standards TRIBUNAL

An Application for Reconsideration

- by -

Jual Furniture Ltd. operating as United Furniture Warehouse
("Jual" or the "employer")

- of a Decision issued by -

The Employment Standards Tribunal
(the "Tribunal")

pursuant to Section 116 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2001/347

DATE OF DECISION: July 5, 2001

DECISION

OVERVIEW

This is an application filed by Alex Jacob Ewashen on behalf of Jual Furniture Ltd. operating as "United Furniture Warehouse" ("Jual" or the "employer") pursuant to section 116 of the *Employment Standards Act* (the *"Act"*) for reconsideration of an adjudicator's decision issued on January 22nd, 2001 (B.C.E.S.T. Decision No. D025/01). It is my understanding that Mr. Ewashen is a principal of Jual.

PREVIOUS PROCEEDINGS

On August 28th, 2000, and under file number ER 100805, a delegate of the Director of Employment Standards issued a Determination ordering Jual to pay the sum of $5,366.76 to its former employee, Derek Kazakoff ("Kazakoff"), on account of 8 weeks' wages as compensation for length of service together with concomitant vacation pay and interest (the "Determination"). Although Kazakoff allegedly received verbal notice sometime in December 1999 that the employer's operations would be closing as of the end of February 2000, this notice was never reduced to writing. The delegate noted that the employer's obligation to pay compensation for length of service would have been avoided had it provided *written*, rather than verbal, notice [see section 63(3)(a) of the *Act*]. However, since no written notice was provided, Kazakoff was entitled to be paid compensation for length of service.

Jual appealed the Determination to the Tribunal primarily on the basis that the Determination was, in the circumstances, unfair. The adjudicator confirmed the delegate's Determination.

THE RECONSIDERATION APPLICATION

Jual's request for reconsideration is contained in a 1-page letter to the Tribunal dated April 9th, and filed with the Tribunal on April 17th, 2001. After reciting the employer's version of events, the nub of the reconsideration application is presented in the following terms:

> "We erred in not giving [Kazakoff] a written notice of termination. Section 2(b) of the Act states, 'promote fair treatment of employees and employers'. In your estimation judging from the above facts, did we not treat our employees fairly?"

ANALYSIS

In order for a timely reconsideration application to succeed, the issue or issues raised in the application must be sufficiently significant to warrant further inquiry. A significant issue is a

serious question "of law, fact or principle or procedure [that is] so significant that [the adjudicator's decision] should be reviewed" (see *Milan Holdings Ltd.,* B.C.E.S.T. Decision No. D313/98).

In the instant case, the adjudicator--as did the Director's delegate--applied the language of the statute to the facts at hand and, in my view, came to an entirely correct result. It would appear that the employer was unaware of its obligations under the *Act* with respect to the termination of employees. It is unfortunate that the the employer was not aware of its obligations under the *Act;* a simple perusal of the *Act* (or the Branch's published guidebook, or a review of the Branch's or Tribunal's website) could have set the employer along the correct path. I might add, for the sake of completeness, that there is a factual dispute between the parties as to whether appropriate verbal notice (or, indeed, any notice at all) was, in fact, ever given by the employer to Kazakoff. However, in light of the governing legal principles, it was not necessary for the adjudicator to resolve this latter factual dispute.

It is, of course, open to the Legislature to amend the *Act* to permit verbal notice of termination; nevertheless, as matters now stand, an employer's obligation to pay compensation for length of service is discharged only on the giving of appropriate *written,* rather than verbal, notice. The Tribunal has consistently held that it does not have the authority to substitute "verbal" for "written" in section 63(3) of the *Act*--see *Dr. Robert S. Wright Inc.,* B.C.E.S.T. Decision No. D060/96; *JFL Ventures Ltd.,* B.C.E.S.T. Decision No. D230/96; *Frans Markets,* B.C.E.S.T. Decision No. D309/96; *Sun Wah Supermarket Ltd,* B.C.E.S.T. Decision No. D324/96; *Workgroup Messaging,* B.C.E.S.T. Decision No. D025/97; *G.A. Fletcher Music Co.,* B.C.E.S.T. Decision No. D213/97; *Zaretski,* B.C.E.S.T. Decision No. D214/97; *Venco Products Ltd.,* B.C.E.S.T. Decision No. D052/99.

ORDER

The application to vary or cancel the decision of the adjudicator in this matter is refused.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal