

An appeal

- by -

Grouse Mountain Resorts Ltd.
("Grouse Mountain Resorts")

- 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: David B. Stevenson

FILE No.: 2001/397

DATE OF DECISION: July 26, 2001

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Grouse Mountain Resorts Ltd. (“Grouse Mountain Resorts”) of a Determination that was issued on February 6, 2001 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Grouse Mountain Resorts had contravened Part 8, Section 63 and Section 66 of the *Act* in respect of the employment of Leanne Barlow (“Barlow”) and ordered Grouse Mountain Resorts to cease contravening and to comply with the *Act* and to pay an amount of \$1,626.36.

Grouse Mountain Resorts says the Determination is wrong because Barlow was given proper notice under the *Act* and quit her employment before the expiration of the notice period.

ISSUE

The issue raised in this appeal is whether Grouse Mountain Resorts has shown the employee was given proper notice under the *Act* and quit her employment before the expiration of the notice period.

FACTS

The Determination sets out the following findings of fact and those findings of fact have not been contested by Grouse Mountain Resorts. There are few facts identified in the Determination which are directly relevant to the issue raised in the appeal.

Grouse Mountain Resorts operates a mountain resort site in North Vancouver, B.C. Barlow worked for Grouse Mountain Resorts from September 18, 1998 to May 12, 2000 as a Snow School Director at the rate of \$38,000.00 a year. Barlow’s employment with Grouse Mountain Resorts was terminated and she filed a complaint claiming overtime wages were owing, improper deductions had been made from her wages and length of service compensation was payable.

There were several issues raised by Grouse Mountain Resorts in response to the complaint, including whether Barlow was a manager for the purposes of the *Act*. The Determination concluded Barlow was a manager. That conclusion effectively determined several aspects of her complaint. It did not determine, however, whether Grouse Mountain Resorts owed length of service compensation to Barlow under Section 63 of the *Act*. Even on that issue, there were a number of matters that had to be decided:

Firstly, was Ms. Barlow laid off and subsequently terminated after 13 weeks of lay off or secondly did the company substantially alter Ms. Barlow’s conditions of employment to consider her employment to be terminated.

The Determination and the documents attached to it indicated that on April 25, 2000, a meeting was held involving Barlow, Neil Shopsowitz and Tony Adams. While the Determination does not identify the positions held by those last two named individuals, it is apparent from the Determination and the material that they held positions of authority within Grouse Mountain Resorts. An interoffice memo was attached to the Determination that set out the content of that meeting:

Meeting with Leanne Barlow, Neil Shopsowitz, and Tony Adams

RE: Leanne's position within the Company

DATE: Tuesday April 25, 2000

Leanne was spoken to about her position within the company. First of all she was relieved of her duties at Grouse Mountain. She was commended for the effort and the willingness that she displayed this past season, however it was made quite clear to Leanne that there were shortfalls within the snow-school and that she did not have the ability to manage efficiently. Leanne was told that as of the 15th of May, that her position organizing and managing the Adventure Center was no longer available to her. Grouse Mountain Resorts are continually searching for ways of offering the best quality product available. That a rearranging of departments has meant Leanne's function this summer is no longer a reality.

However I do believe Leanne should be allowed to return next season in the capacity of an administrative assistant. Leanne's ability [Level III] on snow is an asset, her knowledge of the product is extensive and her ability to administrate clerically was acceptable.

Tony Adams

Two days following the above meeting, Barlow delivered an inter-office memo to Mr. Adams and Mr. Shopsowitz. In that memo she advised Grouse Mountain Resorts of her intention to terminate her employment. Her last day of employment was May 12, 2000. A Record of Employment dated the 23rd May 2000 indicated her reason for leaving was laid off.

The Determination noted the above events and found that Barlow was entitled to length of service compensation. Three reasons were given for that conclusion: first, no written notice of termination was ever given to Barlow and, consequently, Grouse Mountain Resorts had not discharged its liability under Section 63 of the *Act*; second, Barlow was, according to the Record of Employment given to her, laid off and was terminated by the failure of Grouse Mountain Resorts to recall her within the time allowed in subsection 63(5) of the *Act*; and third, Barlow was dismissed by application of Section 66 of the *Act*.

ARGUMENT AND ANALYSIS

There is nothing in the way of argument from Grouse Mountain Resorts. The appeal document included the following:

We feel that the employee was given proper notice under the Act or in [illegible] resigned in writing which was not properly considered in the Determination.

There is reference in the appeal that Tony Adams' memo was given to Barlow.

In response, the Director says there is no support on the facts that Barlow was ever given written notice of termination and, in particular was never given a copy of the memo. Barlow echoes that last point in her reply, adding that she first saw a copy of the memo in the appeal documents. Grouse Mountain Resorts has not shown any error in the conclusion that no written notice of termination was given to Barlow.

The reply of the Director also points out that nothing in the appeal addresses the justification for the conclusion that Barlow was terminated by operation of Section 66 of the *Act* on April 25, 2000. I agree. There was ample justification for the conclusion that Barlow was terminated for the purposes of the *Act* by the decision of Grouse Mountain Resorts to remove her from the position of Snow School Director. In my view, once that conclusion was reached, it was unnecessary, in the circumstances, to consider the matter of the "lay off" at all. Barlow was terminated on April 25, 2000. The only circumstance that could have had any bearing on whether she was entitled to length of service compensation would have been if reasonable alternate employment had been offered and refused. But she was not.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated April 26, 2001 be confirmed in the amount of \$1,626.36, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal