



An appeal

- by -

Jual Furniture Ltd. operating as United Furniture Warehouse  
(“Jual” or “employer”)

- 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:** Paul E. Love

**FILE No.:** 2000/640

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

## DECISION

### OVERVIEW

This is an appeal by the employer who claimed that oral notice, together with discounts on furniture purchased, and assistance to the employee with regard to a possible finance of the business purchase was sufficient to comply with s. 63 of the Employment Standards Act (the “Act”) with regard to compensation for length of service. Written notice of termination, is a minimum employment standard, and there is no provision in the Act for an “oral notice” of termination. I therefore confirmed the Determination.

### FACTS

Derek Kazakof was employed by Jual Furniture Ltd., doing business as United Furniture Warehouse (“Jual” or “employer”). He became employed on August 1, 1991 and ceased employment on February 29, 2000. Jual did not renew its franchise agreement to operate the Castlegar store. Mr. Kazakoff was given no written notice of the termination of his employment. The Delegate found that no notice had been given in writing, and that the Act required written notice of termination, in order to discharge the employer’s liability to pay to the employee compensation for length of service. The Delegate found that Mr. Kazakoff was entitled to the sum of \$5,183.94, plus interest in the amount of \$182.82, which amounted to 8 weeks compensation for length of service.

The parties are at odds as to whether Mr. Kazakoff was given oral notice at the 1999 Christmas party that the store would be ceasing business on February 29, 2000. Jual claims it gave Kazakoff notice, and that Kazakoff was negotiating with the franchiser to purchase the Castlegar store. The employer says that it assisted Mr. Kazakoff in filling out an application form for funding the purchase of the business through Community Futures. The employer says that it gave to Mr. Kazakoff furniture at a discounted price, in recognition that the employment relationship was coming to an end. The employer says Kazakoff asked for, and it provided, a letter of reference dated January 27, 2000 which was requested “some weeks” before it was written by the employer, which would be some evidence that he knew the store was closing. Kazakoff says that he had notice that Jual might not renew its franchise agreement. Kazakoff says that the employer represented at the same meeting that all employees would have continuing employment.

The employer also points out an error in describing the location of the store, which does not, of course affect the reasoning set out in the Determination.

## ISSUE

Did the Delegate err in determining that liability for compensation for length of service could be discharged by the giving of written notice only?

## ANALYSIS

In an appeal under the *Act*, the burden rests with the appellant, in this case the employer, to establish an error such that I should vary or cancel the determination. The employer argues that the employee knew that he had a limited future with the employer, that the employer was ceasing operations, and that the employee received discounts on furniture. It is argued that the discounts on furniture was essentially a “gift and thanks in recognition” that the employee’s longstanding relationship with the employer was coming to an end.

The Delegate correctly analyzed this matter. Under s. 63 of the *Act*, an employer must pay to the employee compensation for length of service, unless the employer gives advance notice of the termination of employment. The employer’s liability for compensation for length of service is deemed to be discharged if the notice is in writing. The giving of written notice of termination, is a minimum standard of employment in British Columbia. The purpose for giving written notice is to ensure that the employee, and the Director if necessary, can clearly see that the employee has been given advance notice of the termination of the employment relationship. Provided that the employer gives sufficient notice, the employer can discharge an employee without cause at any time during the employment relationship. If the employer fails to give the requisite amount of notice the employer must pay to the employee compensation for length of service in accordance with the *Act*.

In my view, this employer could have discharged its responsibility to Mr. Kazakoff by giving of written notice of the date of termination, and delivering it to Mr. Kazakoff no later than 60 days prior to the termination date. It failed to do so, and therefore it is liable to Mr. Kazakoff for his full entitlement under the *Act*. An “oral notice” is insufficient to discharge the employer’s obligation to the employee.

**ORDER**

Pursuant to section 115 of the *Act*, the Determination dated August 28, 2000 is confirmed.

***PAUL E. LOVE***

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**Paul E. Love**  
**Adjudicator**  
**Employment Standards Tribunal**