

An appeal

- by -

Jellybean Park Playcare Inc.  
("Jellybean Park")

- 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:** Kenneth Wm. Thornicroft

**FILE No.:** 2000/715

**DATE OF DECISION:** January 18, 2001

## DECISION

### OVERVIEW

This is an appeal filed by Laurel A. Stewart on behalf of Jellybean Park Playcare Inc. (“Jellybean Park”) pursuant to section 112 of the Employment Standards Act (the “Act”). Jellybean Park appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on September 21st, 2000 under file number ER#067-977 (the “Determination”) pursuant to which Jellybean Park was ordered to pay its former employee, Brandy Gibson (“Gibson”), the sum of \$489.24 on account of two weeks’ wages as compensation for length of service (see section 63 of the Act), concomitant vacation pay and interest.

In accordance with the provisions of section 107 of the Act, and as communicated to the parties by way of a letter from the Tribunal’s Vice-Chair dated December 8th, 2000, this appeal is being adjudicated based on the written submissions of the parties.

### ISSUE ON APPEAL

Jellybean Park says, contrary to the findings contained in the Determination, that Gibson (along with all other employees) was given proper written notice of termination and, accordingly, no compensation for length of service is payable to her [see section 63(3)(a) of the Act].

### FACTS AND ANALYSIS

Jellybean Park provided temporary childcare services for shoppers. As detailed in the Determination, Ms. Gibson was employed by Jellybean Park, at its Guildford Mall (Surrey) location, as a childcare attendant from April 6th, 1998 until January 4th, 2000. She earned \$8 per hour. Her last working shift was December 31st, 1999 but she did report to work to attend to some “cleanup” duties on January 4th, 2000. Jellybean Park issued Gibson a record of employment on January 5th, 2000 which indicated that her employment was terminated due to a “shortage of work”.

According to the information set out in the Determination, Jellybean Park never issued Gibson any *written* notice of termination but Gibson was informed, by telephone, on or about December 27th, 1999, that her last regular working day would be the 31st. Earlier in the month of December 1999, “rumours” had circulated amongst the staff that the Guildford Mall childcare centre would be closing but, as indicated, no formal written notice was ever issued to Gibson or, apparently, to any other employee.

Mr. Geoff Edington, Jellybean Park's "Administrative Consultant", says that he "personally delivered the payroll to Guildford" on November 20th, 1999 and that he also delivered a written notice to the playcare centre's manager, Ms. Olga Geiger, which stated that the playcare centre would be closed as of December 31st, 1999. While this memorandum, dated November 20th, 1999 and addressed to all employees of the Guildford Mall playcare centre, does not explicitly advise the employees that their employment will be terminated as of December 31st, 1999, certainly, that is a reasonable inference to be drawn from the text of the notice.

However, Mr. Edington also says that: "*It may be that Olga Grgar (sic) did not inform the staff in writing that we were going to close but I certainly did as early as possible as I did not want to make their Christmas any more dismal than necessary*" (my *italics*). For her part, Ms. Gibson says that she never received any written notice of termination; rather, she only was verbally advised on December 27th that the centre would cease operations as of December 31st, 1999.

Mr. Edington does *not* say that he personally delivered written notice of termination to Ms. Gibson; Ms. Gibson denies receiving any such written notice. Indeed, she denies having ever seen Mr. Edington at the Guildford Mall centre after July 1999. There is no clear evidence before me--say, in the form of a written acknowledgement--that Ms. Gibson was given formal written notice of termination. Ms. Geiger, as noted in the Determination, says that she did not deliver any written notice of termination to Ms. Gibson or to any other employee. I note that Jellybean Park apparently never referred to, or provided a copy of, Mr. Edington's memorandum during the course of the delegate's investigation.

On a balance of probabilities, I am simply not satisfied that Ms. Gibson received, as is required under section 63 of the *Act*, written notice of termination (see *e.g.*, *Sun Wah Supermarket Ltd.*, B.C.E.S.T. Decision No. D324/96; *G.A. Fletcher Music Co. Ltd.*, 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). Accordingly, I cannot conclude that the Director's delegate erred in awarding Ms. Gibson 2 weeks' wages as compensation for length of service.

**ORDER**

Pursuant to section 115 of the Act, I order that the Determination be confirmed as issued in the amount of \$489.24 together with whatever additional interest that may have accrued, pursuant to section 88 of the Act, since the date of issuance.

**KENNETH WM. THORNICROFT**

**Kenneth Wm. Thornicroft  
Adjudicator  
Employment Standards Tribunal**