EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act, R.S.B.C. 1996, c. 113

-by-

P.A.M. Enterprises Ltd.
operating as Loonie Mart

(the "employer")

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE NO.: 98/790

DATE OF DECISION: February 5, 1999

DECISION

OVERVIEW

This is an appeal filed by Patti Batch presumably on behalf of P.A.M. Enterprises Ltd. (the "employer") pursuant to section 112 of the *Employment Standards Act* (the "*Act*") from a Determination issued by a delegate of the Director of Employment Standards (the "Director") on November 27th, 1998 under file number 091-846 (the "Determination").

The Director determined that the employer owed its former employee, Jane Gretz ("Gretz"), the sum of $165.13 on account of unpaid statutory holiday pay (section 45), one week's wages as compensation for length of service (section 63), concomitant vacation pay (section 58) and interest (section 88).

By way of the Determination, the Director also levied a $0 penalty, pursuant to section 98 of the *Act* and section 29 of the *Employment Standards Regulation*, based on the employer's (admitted) contravention of section 45 of the *Act.*

ISSUE TO BE DECIDED

The employer conceded to the delegate that it had not properly calculated Gretz's statutory holiday pay and does not dispute the $30 award issued on this particular account. The only issue raised during the investigation, and again on this appeal, is whether or not the employer had just cause to terminate Gretz's employment.

FACTS AND ANALYSIS

Gretz was employed as a cashier at the employer's Maple Ridge "Loonie Mart" from September 17th, 1997 until she was terminated on or about April 22nd, 1998.

During the investigation, the employer's principal, Ms. Batch, first took the position that Gretz had quit her employment; later on, Ms. Batch took the position that she had laid off Gretz due to the latter's "attitude". The Record of Employment issued by the employer did not indicate that Gretz had quit (code "E"), was dismissed (code "M"), or laid off due to a shortage of work (code "A"); rather, the employer stated on this form that the reason for Gretz's termination was "other" (code "K").

The employer takes that position that it had just cause, by reason of Gretz's poor work performance, to terminate Gretz's employment. Of course, if the employer did have just cause, Gretz is not entitled to compensation for length of service.

The relevant legal principles governing a lawful termination for poor work performance are set out at page 2 of the Determination. There was no evidence before the delegate, nor is there any

evidence before me, upon which I could reasonably conclude that the employer satisfied its burden of proving that it had just cause to terminate Gretz for unsatisfactory performance. For the reasons set out in the Determination, which I adopt, I am of the view that the employer was properly found liable for one week's 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 $165.13 together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Inasmuch as the employer concedes that it breached section 45 of the *Act*, the $0 penalty is also confirmed.

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Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal