



An appeal

- by -

Lori Stromquist
("Employee")

- of a Determination issued by -

The Director of Employment Standards
("Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

TRIBUNAL MEMBER: Sheldon M. Seigel

FILE No.: 2011A/13

DATE OF DECISION: April 7, 2011

DECISION

SUBMISSIONS

Lori Stromquist	on her own behalf
Rory K. McDonald	Counsel for Sisto's Neighbourhood Pub Ltd.
Kristine Booth	on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by Lori Stromquist (the “Employee”), of a Determination that was issued on December 15, 2010, by a delegate of the Director of Employment Standards (the “Director”). Sisto's Neighbourhood Pub Ltd. (the “Employer”) operates a pub, and the Employee was a server at the pub. The Determination found that the Employer had not contravened sections 63 or 66 of the *Act*, as the Employer did not terminate the Employee's employment or substantially alter the Employee's terms and conditions of employment. The Director found that the Employee was not entitled to compensation for length of service in respect of the employment and made no order.
2. The Employee submits that the Director erred in law and/or failed to observe the principles of natural justice in making the Determination.
3. The Employee seeks a variation of the Determination.

ISSUE

4. The issue in this appeal is whether the Director erred in law or failed to observe the principles of natural justice in making the Determination?

ARGUMENT

5. The Employee submits that the delegate did not understand or failed to take into account the diagnosis of the registered psychologist provided to the delegate prior to the issuing of the Determination. The Employee also submits that her evidence was not adequately considered or that the delegate reached an unfair conclusion based on the evidence before her. The Employee also provided two letters from co-workers in support of her Appeal.
6. The Respondent submits that the Appeal is not based on the grounds that new evidence has become available that was not available at the time the Determination was made, so any new evidence should be rejected. The Respondent also submits that the appeal and supporting materials provides no reasonable argument in support of the Employee's position that the Director erred in law or failed to observe the principles of natural justice in making the Determination.
7. The Director submits that the Employee has not established that there was an error in law or a denial of natural justice and that the essence of her appeal is a re-argument of the initial complaint. The Director does not address the two letters in support of the appeal.

ANALYSIS

8. With respect to the two letters in support of the Appeal, I note that copies of each of them appear in the Record produced by the delegate. The Employee says nothing about the letters in her submissions that would lead me to conclude that these letters are any more relevant than they were to the delegate. The delegate refers to evidence in support of the Employee's claims but does not specifically refer to these documents. The documents do not appear to provide any evidence different from the position put forth by the Employee for the purposes of the Determination and considered by the delegate. I have insufficient evidence to conclude that the inclusion of these two documents provides any relevant evidence of error in law or denial of natural justice for the purposes of this Appeal.
9. I find that each of the Employee's contextual submissions in this appeal was considered by the delegate in the Determination. The Determination comprehensively reviews the Employee's positions, the Tribunal's decisions, and Supreme Court of British Columbia decisions on relevant peripheral issues. In my view the delegate competently sets out the relevant evidence before her, interpreted and applied the relevant sections of the legislation, and appropriately applied relevant principles of general law. She found facts that on the face of the Determination are wholly supported by the evidence, and reasonable. I find no flaw in the method of consideration applied by the delegate.
10. With respect specifically to the diagnosis of the registered psychologist, a careful reading of the Determination discloses that although the delegate does not specifically refer to the diagnosis, neither does the delegate deny that the Employee has Post Traumatic Stress Disorder ("PTSD"). Indeed the Determination concludes that the Employee might have been suffering from PTSD, but that the Employee did not choose to resign in the heat of the moment but after considerable time and activity allowing for consideration and "these actions were not impulsive." Essentially, then, the delegate determined that the diagnosis of PTSD was not relevant to her findings based on the evidence before her. I find that the delegate did adequately consider all of the evidence including the diagnosis referred to above.
11. The Determination discloses a reasonable process of consideration of all of the evidence before it and no evidence of any inappropriate or improper methodology or bias. The Employee was allowed ample opportunity to present her case and did so comprehensively.
12. I find that the Director did not err in law or fail to observe the principles of natural justice in making the Determination. The Appeal fails.

ORDER

13. Pursuant to section 115 of the *Act*, I confirm the Determination dated December 15, 2010.

Sheldon M. Seigel
Member
Employment Standards Tribunal