

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act*

- by -

Wilson Place Management Ltd.  
Operating Wilson Place  
( "Wilson Place" )

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** David B. Stevenson

**FILE NO.:** 95/054

**DATE OF HEARING:** April 9, 1996

**DATE OF DECISION:** April 15, 1996

## **DECISION**

### **APPEARANCES:**

Richard Stockbrooks:	for Wilson Place
James R. Dunne:	for the Director of Employment Standards
Ling Shu:	the Complainant

### **OVERVIEW**

This is an appeal by Wilson Place Management Ltd., operating Wilson Place, (“Wilson Place”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”), from a Determination issued by the Director of Employment Standards (the “director”) on December 12, 1995 [CDET #000410]. In this appeal, Wilson Place says that no payment for length of service is owed to the Complainant, Ling Shu (“Shu”), because she voluntarily resigned from her employment at Wilson Place.

### **FACTS**

Wilson Place operates an adult care facility in Port Coquitlam. Shu was employed there as a part time care aide from July 24, 1993 to June 9, 1995. While employed at Wilson Place, Shu had applied for a job at Ridge Meadows Hospital and Health Care Centre (“Ridge Meadows”). On June 2, 1995, Ridge Meadows called Shu and asked her to attend an orientation session in the following week. Shu agreed.

Since August of 1994 Shu had been having problems with her wrist. On June 1, 1995 she made appointments for June 3, 1995 to see a doctor, Chung N. Wong, and an acupuncturist. She saw both those persons on that day and the doctor gave Shu a note which stated:

This is to advise that the above-named patient will need to be off work for Sunday, Monday and Tuesday (June 4th, 5th and 6th, 1995) due to medical reasons.

Shu was scheduled to work on June 3, 1995 from 3:00 p.m. to 11:00 p.m. She worked that shift. She testified that she did so because she knew her employer could not easily find a replacement on short notice. She told her employer following the shift that she would not be in for her next shift, which was to commence at 7:00 am, June 4, for four hours. She called later on June 4 to excuse herself for the June 5 shift and again on June 5 to excuse herself for the June 6 shift. On June 5 and 6 Shu attended the orientation at Ridge Meadows. She testified that she was able to do that, even though

she could not perform her regular job, because there was no physical activity involved in the orientation and so her sore wrist was not a problem.

On either June 5 or June 6, the employer's Director of Nursing telephoned the residence of Shu and discovered that she was at Ridge Meadows. She conveyed that to Mr. Stockbrooks, the Administrator at Wilson Place. Shu was scheduled to be off on June 7 and 8. On June 9 she was phoned before the start of her shift and asked to come in early for an interview. When she arrived, she gave the doctor's note to the Director of Nursing. She was then taken to Mr. Stockbrooks' office where a discussion took place and the employment of Shu at Wilson Place was ended. There is some dispute about the content of the discussion. Mr. Stockbrooks says that Shu voluntarily resigned following the discussion. Shu says the resignation was not voluntary but was given after she was told she could either resign or she would be fired. The resignation letter is addressed to "Roberta", the Director of Nursing, and states:

Please accept this letter as my resignation from the regular part time position as a care aide at Wilson Place.

I have found other employment.

The last sentence is not true; at the time of the discussion Shu had not found other employment. Mr. Stockbrooks said during the hearing that Shu was placed on the casual employment list at Ridge Meadows following the orientation, but Shu testified that she didn't know if she was on the list and had not worked at Ridge Meadows since the orientation. In any event, placement on the casual employment list of a health care facility such as Ridge Meadows is an uncertain employment situation. In cross-examination Shu rejected the suggestion that she had done anything wrong. She was adamant that while she could not do her regular job because of the soreness in her wrist, that problem did not affect her ability to attend the orientation. She testified that she did no physical work during the orientation. I conclude from all her evidence that before the discussion on June 9, 1995 Shu had no reason to resign and no intention of doing so.

At the hearing, I was provided with a copy of the letter from the employer's file. The copy contained two handwritten notations which Mr. Stockbrooks said were placed there by his Director of Nursing. The first was referred to by Mr. Stockbrooks as a "witnessing" of the resignation; the second was a comment which stated, "Note - usual notice period waived by consensus". Mr. Stockbrooks was not certain when that comment was put on the letter except that it was sometime after June 9, 1995. Shu had not seen that notation and was not part of a "consensus" waiving any notice period.

Mr. Stockbrooks testified that during the discussion on June 9 Shu was told that he felt she had been dishonest, that her doctor's note was not believable, that she had concealed information, that he had lost faith and trust in her, that the act she

committed was fraudulent, that he felt the situation to be very serious and that she would be subject to discipline, up to and including dismissal. He says that the resignation was her idea and that he told her, on two occasions during the discussion, that she didn't have to resign, but she wanted to. He also testified that from the content of the discussion Shu "probably felt that she would be dismissed from Wilson Place."

Shu testified that during the discussion she was called a liar and told by Mr. Stockbrooks that she could not stay at Wilson Place. She says she was given the choice of resigning or being fired and that the resignation letter was already prepared when she went to Mr. Stockbrooks' office.

### **ISSUE TO BE DECIDED**

The sole issue which emerged in this appeal was whether or not Shu voluntarily resigned her employment with Wilson Place on June 9, 1995. If so, Wilson Place would not be liable for length of service compensation.

Section 63(3)(c) of the *Act* states:

- (3) The liability is deemed to be discharged if the employee
- (c) terminates the employment, retires from employment, or is dismissed for just cause.

At the outset of the hearing I asked Mr. Stockbrooks if Wilson Place intended to argue, as an alternative to their position that Shu had voluntarily resigned, that Wilson Place had just cause to terminate her. I asked this question because it had been suggested in the appeal documents filed by Wilson Place that there was ample evidence to terminate Shu for lying and obtaining medical leave under false pretenses. Mr. Stockbrooks stated that Wilson Place did not take the position that there was just cause to terminate Shu. He was right to take that position. As the hearing progressed, it became clear that while Mr. Stockbrooks had some suspicions about the conduct of Shu, he had no evidence that would have supported a conclusion that Wilson Place had just cause to terminate Shu.

## ANALYSIS

The act of resigning, or “quitting”, employment is a right that is personal to the employee and there must be clear and unequivocal evidence supporting a conclusion that this right has been voluntarily exercised by the employee involved. There is both a subjective and objective element to the act of quitting: subjectively, an employee must form an intention to quit; objectively, that employee must carry out an act that is inconsistent with further employment. The atmosphere created by Mr. Stockbrooks and his Director of Nursing during the discussion made it probable that Shu felt she had no real alternative but to submit an involuntary resignation. Whether I accept the evidence of Shu, that she was told to resign or be fired, or the evidence of Mr. Stockbrooks, that it was likely Shu understood if she didn’t resign she would be fired, the result is the same.. The resignation, in the circumstances in which it was acquired, cannot be viewed differently than a termination. Shu had no real control over either. It was not her intention to terminate her employment, that result was effected by the words and conduct of the representatives of Wilson Place. I accept Shu’s evidence that the resignation letter was prepared in advance of the discussion. It is probable, therefore, that the notion of the resignation was proffered by the employer during the discussion, and not suggested or proposed by Shu.

On balance, I find that the letter of resignation was not a freely formed expression of intent by Shu but rather was the result of undue pressure imposed upon her by representatives of Wilson Place. It follows, and I conclude, that Shu did not terminate her own employment and Wilson Place is not relieved of its liability for length of service compensation to Shu.

## ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination of the director, CDET #000410, dated December 12, 1995, is confirmed. At the outset of the hearing it was agreed that if I were to confirm the Determination the amount payable to Shu would be \$711.23.

*“Dave Stevenson”*

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**

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