EMPLOYMENT STANDARDS TRIBUNAL

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

Employment Standards Act S.B.C. 1995, C. 38

- by -

Dr. Robert S. Wright Inc.
("Wright Inc.")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

FILE NO.: 95/030

DATE OF HEARING: April 22, 1996

DATE OF DECISION: May 3, 1996

DECISION

APPEARANCES:

For the appellant: Jacqueline Stowell

For the Director: Adele Adamic

For the complainant: in person

OVERVIEW

This is an appeal by Dr. Robert S. Wright Inc. ("Wright Inc.") pursuant to section 112 of the *Employment Standards Act* (the *"Act"*) against Determination Number CDET 000188 issued by the Director of the Employment Standards Branch (the "director") and dated November 24, 1995. Wright Inc. says there is no length of service compensation owing to the complainant, Katharine Lee Vinge, because:

1. The complainant was given two weeks notice of termination of employment;

2. In any event, the complainant was entitled to no more than two weeks length of service compensation upon termination of her employment; and

3. The complainant refused an offer to "work out" the balance of the notice to which she claimed entitlement.

There was no dispute or issue about the amount determined by the director to be payable to the complainant in the event that I confirm the Determination of the director.

FACTS

On April 2, 1990, the complainant became an employee of Chequers Dental Laboratories Ltd ("Chequers"). She was hired and employed as an assistant dental technician. At that time Chequers was controlled and directed by two individuals, Robert S. Wright ("Wright") and Jacqueline Stowell. Wright ceased to be a director and officer of that company, by reason of his personal bankruptcy, in April, 1993. In June, 1993 Chequers filed for bankruptcy. The complainant ceased to be employed by Chequers on June 16, 1993. Shortly after, and within thirteen weeks, the complainant became an employee of Wright Inc. as an apprentice dental technician. The sole officer and director of Wright Inc. is Wright. The complainant performed

the same job, at the same location and under the same supervision as when she was employed at Chequers. The business, including the employment of many of the employees, of Chequers was assumed by Wright Inc. The complainant continued to be employed by Wright Inc. until May 18, 1995.

Wright Inc. operated dental laboratories at two locations, one in Vancouver and one in Abbotsford. Wright, who is a dental surgeon, operated a dental practice. In March of 1995, Wright sold his dental practice. The sale did not include the dental laboratories. However, following the sale the Abbotsford laboratory was closed. The complainant was transferred to the Vancouver laboratory. Ms. Jacqueline Stowell was assisting Wright in winding up his businesses, which included closing the dental laboratories. On May 4, 1995 the remaining three employees of Wright Inc. working at the dental laboratory were assembled by Ms. Stowell and were verbally given notice that their employment would end May 18, 1995.

On May 18, 1995, the complainant and Ms. Stowell had two discussions. In the morning, the complainant asked Ms. Stowell whether she had started to make out the final pay cheques. She informed Ms. Stowell that, in addition to her regular pay and vacation pay, she should receive three weeks additional pay because she did not have proper notice. Ms. Stowell said she didn't think that the complainant was entitled to more than two weeks notice, but she would check. At the end of her day, the complainant went into Ms. Stowell's office to ask whether her final paycheck was ready and to get her Record of Employment form. Ms. Stowell had neither a cheque nor the Record of Employment form ready for the complainant and the complainant was upset by this. There was further discussion about the amount of notice that the complainant was entitled to. Ms. Stowell said that she had checked and that the complainant was only entitled to two weeks. The complainant disagreed. Ms. Stowell then told the complainant that if she felt strongly about the additional three weeks notice she could work for three more weeks. The complainant did not respond directly to that offer, but told Ms. Stowell that she had other plans and wished to be able to pick up her final paycheck and her Record of Employment form in Abbotsford the following day. She then left.

The complainant picked up her final paycheck and her Record of Employment form on the morning of May 19, 1995 at an office in Abbotsford. The three weeks severance was not included. The Record of Employment showed the reason for issuing the form as, "company ceasing to operate".

ISSUES TO BE DECIDED

There are three issues to be decided.

Issue 1

The first issue is whether Wright Inc. gave two weeks notice of termination to the complainant. I find that the required statutory notice was not given to the complainant.

Analysis

Section 63 of the *Act* establishes a liability on an employer to compensate an employee for length of service upon termination of employment. Subsection 63(3) discharges the employer from that liability in certain circumstances, including the giving of written notice. The subsection states, in part:

> (3) The liability is deemed to be discharged if the employee
> (a) is given written notice of termination as follows: . .

There was no written notice given to the complainant. The *Act* does not accept verbal notice as a method of discharging the statutory liability of the employer to compensate for length of service upon termination. Written notice is the statutorily required standard of communicating termination to an employee. The state of knowledge of an employee is not relevant to the question of whether the employer has met the statutory requirements.

Issue 2

The second issue is whether the complainant is entitled to more than two weeks length of service compensation upon her termination. I find that the complainant is entitled to five weeks length of service compensation.

Analysis

The complainant started her employment as a dental technician on April 2, 1990 with Chequers. In September of 1993, she continued this employment with Wright Inc. after Wright Inc. took over the business following the bankruptcy of Chequers. Section 97 of the *Act* (formerly Section 96 of the *Employment Standards Act,* SBC, 1980, ch. 10) states:

> 97. If all or part of a business or a substantial part of the entire assets of a business is disposed of, the employment of an employee of the business is deemed, for the purposes of this Act, to be continuous and uninterrupted by the disposition.

There is nothing in this provision that excludes its application in a bankruptcy or receivership situation. The wording of the section is very broad. It applies to any disposition of all or part of

a business or a substantial part of the assets of the business. A "disposal" is defined in the *Interpretation Act* as :

transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things.

I am satisfied from the evidence that there was a transfer within the meaning of Section 97 of the *Act* (or Section 96 of the former *Act*) when Wright Inc. assumed the business of Chequers in 1993. The employment of the complainant is therefore deemed continuous from April 2, 1990 until her termination by Wright Inc. on May 18,1996 and she is entitled to five weeks length of service compensation.

Issue 3

The third issue is whether the complainant's failure or refusal to consider the employer's proposal to continue working for an additional three weeks after May 18, 1995 disentitles her from all or part of the length of service compensation. I find that it does not.

Analysis

This issue can be quickly addressed. The employment of the complainant was terminated by the employer on May 18, 1995. The proposal of the employer was not made until the complainant's employment had ended. The business ceased to operate as of May 18, 1995. The employer did not establish that the work of the complainant would have existed after May 18, 1995. There was some reference in the case of the employer that the complainant could have worked at inventory and general cleanup relating to the closure of the business, but it was apparent that the work contemplated to be performed by the complainant was substantially different from her work as a dental technician. In those circumstances, it would be inconsistent with the *Act* to conclude that the complainant was obligated to accept the proposal of the employer, particularly in light of provisions of the *Act* which preclude an employer from changing conditions of employment after notice of termination has been given without the consent of the employee (section 67) and which recognize the concept of constructive dismissal where there is a substantial change to employment conditions (section 66).

ORDER

Pursuant to Section 115, I order that Determination Number CDET 000188 be confirmed.

"David Stevenson"

David Stevenson
Adjudicator
Employment Standards Tribunal

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