

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 -

Dyson Travel Visions Inc.
("Dyson")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: E. Casey McCabe

FILE NO.: 96/639

DATE OF HEARING: February 14, 1997

DATE OF DECISION: February 17, 1997

DECISION

APPEARANCES

Cheryl Christian for Dyson Travel Visions Inc.
Gloria Sigmund for herself
Steve Mattoo for the Director of Employment Standards

OVERVIEW

This is an appeal by Dyson Travel Visions Inc. (“Dyson”) pursuant to Section 112 of the Employment Standards Act (the “Act”) against Determination No. 004474 issued by a delegate of the Director of Employment Standards (the “Director”) on October 28, 1996. The Director’s delegate determined that Dyson contravened the Act by failing to pay compensation based on length of service to the complainant.

ISSUES TO BE DECIDED

Did the employer terminate the complainant without just cause or did she quit? If the former is the employer liable for compensation pay under Section 63 of the Act?

FACTS

The employer operates a travel agency in White Rock B.C. The complainant was employed as a travel agent from September 25, 1995 to June 13, 1996. On June 13, 1996 the complainant submitted a letter of resignation to her employer. That letter reads as follows:

Cheryl :

Firstly, thank you for the opportunity of working with you and for you since last September. I appreciate all your help and patience.

I have been offered a wage and benefit package elsewhere which is too good to turn down, given my circumstances.

I start my new job July 1, 1996 and am more than willing to work up until then for you. I ask, however, that I be given the following days off (previous commitments)

Tuesday, June 25
Thursday, June 27

Again Cheryl, thank you for everything. Perhaps if and when I work as an “outside salesperson”, we can once again work together.

Regards

Gloria Sigmund

Cheryl Christian is the owner of Dyson Travel Visions Inc. and testified for the employer. She stated that she received the resignation about 9:30 am June 13, 1996. She was surprised and upset but did not want to discuss it at the time. She left the office to attend a meeting but changed her mind as she thought she should address the situation immediately. She returned to the office and approached the complainant. She could not recall the exact words of the conversation but does remember that the contents of the resignation were not discussed. However she does recall that she told the complainant that she thought it would be best if the complainant were to leave that day. She stated that the complainant agreed with that and candidly admitted that she didn't know what else the complainant could have done under the circumstances.

Gloria Sigmund also testified. She testified that she had been advised by others that because she was paid bi-weekly that she was obliged to give two weeks' notice of termination. She stated that despite her resignation letter not specifying a final day of work it nonetheless complied with the notice requirement she felt she had to give. She stated that she did not indicate at any time in the conversation with Cheryl Christian that she wanted to leave prior to the expiry of the two week notice period. She further testified that she was shocked when told to leave and that “I just assumed I had to leave”.

Cheryl Christian testified that she felt from the tone of the letter that the complainant was giving her an option. In reference to paragraph three of the letter of resignation she further testified that she felt that the complainant “...would work if I wanted her to and wouldn't if I didn't. I think in our business if someone gives notice it is better to leave than to stay. I understand it to mean it was my call.”

ANALYSIS

The issue is whether Gloria Sigmund quit or was terminated without cause on June 13, 1996. I find that she did not quit. The letter of resignation states quite clearly that the complainant was willing to work her notice period. The Employer, after receiving the notice, and having a period to consider its position, returned to the office and asked the complainant to leave at the end of her shift on June 13, 1996. The Complainant felt that she had no option but to comply with that request. I find that the complainant felt that the complainant was terminated and the employer is liable for compensation for length of service under Section 63(1).

ORDER

Pursuant to Section 115 of the Act Determination CDET 004474 is confirmed.

E. Casey McCabe
Adjudicator
Employment Standards Tribunal