

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

- by -

Darlene Mortell, Director / Officer of 257797 B.C. Ltd.  
Eric Richard Mortell, Director / Officer of 257797 B.C. Ltd.  
257797 B.C. Ltd.  
(Licefa International Inc.)  
(" Licefa ")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 96/149

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

## DECISION

### OVERVIEW

This is an appeal by Licefa, 257797 B.C. Ltd. and the named directors / officers pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against Determinations No. CDET 000963, DDET 000091 and DDET 000092 issued by the Director of Employment Standards (“Director”) on February 6, 1996. In this appeal the appellants claim that no compensation for length of service or vacation pay is owed to Linda Huber (“Huber”) and that no wages are owed to Sylvie Allen (“Allen”).

I have completed my review of the written submissions made by the appellants and the information provided by the Director.

### FACTS

257797 B.C. Ltd. , formerly Licefa International Inc. employed Huber commencing November 15, 1995 and Allen commencing May 20, 1995, as Opticians at their business located at 588 Park Royal Shopping Centre.

On September 4, 1995, Eric Richard Mortell (“Mortell”) entered the business and advised another employee who was present at the time that the business was being closed. He then proceeded to remove all stock from the premises.

There is no dispute that Eric Richard Mortell and Darlene Mortell were directors / officers of 257797 B.C. Ltd. at all times material with respect to this matter.

Huber and Allen filed complaints with the Employment Standards Branch alleging that they were owed compensation for length of service, vacation pay and wages.

The Director investigated Huber’s and Allen’s complaints and, subsequently, determinations were issued.

### ISSUES TO BE DECIDED

The issues to be decided in this appeal are:

1. Is Huber entitled to 2 weeks compensation for length of service ?
2. Is Huber entitled to vacation pay as calculated by the Director ?
3. Is Allen owed wages ?

## ARGUMENTS

The appellants argue that:

- as Huber was employed for less than one year, her entitlement to compensation for length of service pursuant to section 63 is 1 week;
- the Director's calculation of the vacation pay owing to Huber is incorrect as Huber took time off during her period of employment and that should be considered as vacations;
- Allen's last day of work was August 27, 1995 and she is not owed any further wages.

The Director contends that:

- Huber is entitled to 2 weeks compensation for length of service
- Huber is entitled to the vacation pay as calculated
- Allen's last day of work was September 3, 1995
- Allen is owed wages

## ANALYSIS

Upon reviewing the submissions and information provided, it is apparent that Huber was not given written notice as required by both the former Act and Section 63 of this *Act*. The amount of required notice was 2 weeks and in the absence of such notice, I must conclude that pay in lieu of the notice is owing to Huber.

Furthermore, the appellants have not provided any payroll records to support their contention that Huber was on vacation at any time during her period of employment. In the absence of such information, I must conclude that Huber is entitled to vacation pay as calculated and set forth on the determinations.

The information provided by Allen's co-worker was that she was employed up to and including September 3, 1995. The appellants have not provided any payroll records to dispute this assertion. In the absence of any contradictory evidence, I must conclude that Allen worked up to and on September 3, 1995 and is therefore owed wages for such work.

## ORDER

Pursuant to Section 115 of *Act*, I order that Determinations No. DDET 000091, DDET 000092 and CDET 000963 be confirmed in the amount of \$2120.43 .

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**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**

May 15, 1996  
**Date**

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