

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 -

Bobbie J. Prosser
(the "Prosser")

a Determination issued by

THE DIRECTOR OF EMPLOYMENT STANDARDS
(the "Director")

ADJUDICATOR: Jerry W. Brown

DATE OF DECISION: May 1, 1996

FILE NO.: 96/091

DECISION

OVERVIEW

This is an appeal by Bobbie J. Prosser ("Prosser") pursuant to Section 112 of the *Employment Standards Act* (the "Act"), from Determination #CDET 000847 issued by the Director of Employment Standards (the "Director") on January 22, 1996. The Director determined that the employer, 474722 BC Ltd. operating Tim Horton's ("Horton's") has not contravened the Act. Prosser claims that she is owed compensation for length of service.

I have completed my review of the written submissions made by the parties and the information provided by the Director. I have concluded that the Director was correct in finding that Horton's has not contravened the Act.

FACTS

Prosser began working for Horton's in December of 1994 and commenced sick leave on September 28, 1995. Prosser told Horton's that she would be off work until October 23, 1995 as per her doctor's instructions. Prosser and Horton's were in contact on November 3, 1995 and Prosser communicated with the owners of Horton's on November 9, 1995.

ISSUES TO BE DECIDED

1. Did Prosser abandon her employment; or
2. Was Prosser owed compensation for length of service.

ARGUMENTS

Prosser claims that she was in contact with a co-worker at Horton's and informed the co-worker that she required an extra two weeks of sick leave past the scheduled October 23, 1995 return to work. Prosser contends that she was terminated by Horton's on November 9, 1995. Prosser also claims that all aspects of the case were not considered by the Director's delegate when making the Determination. Prosser also claims in her original complaint that she is owed overtime.

Horton's contends that Prosser abandoned her position by not directly contacting the owners at Horton's after she failed to return to work on October 23, 1995. Horton's claims it was unable to contact Prosser as she had changed her telephone number and address without notifying Horton's.

ANALYSIS

The reasons schedule for the Determination indicates that Prosser contacted the owners of Horton's directly when providing them with the doctor's note and indicated she would be off work until October 23, 1995. Prosser does not dispute this. Prosser does not dispute the fact that she did not contact the owners of the business again directly until November 3, 1995 at which time she called requesting shift times. Prosser does not dispute the fact that she failed to advise Horton's of a change in her address and telephone number.

There was nothing in Prosser's appeal materials that persuades me that the Director's delegate was incorrect in reaching the conclusion that Prosser had, in fact, abandoned her position and therefore Horton's was not liable for compensation for length of service.

ORDER

In summary, I order under Section 115 of the *Act*, that Determination #CDET 000847 be confirmed.

“Jerry Brown”

Jerry W. Brown

Adjudicator

Employment Standards Tribunal

EKB:96289