

An appeal

- by -

Hannah Enterprises  
("Hannah")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

**ADJUDICATOR:** April Katz

**FILE No.:** 2000/791

**DATE OF DECISION:** February 13, 2001

## **DECISION**

### **SUBMISSIONS:**

Debbra Greig   on behalf of Hannah Enterprises  
David Oliver   on behalf of the Director

### **OVERVIEW**

The Employer, Hannah Enterprises, (“Hannah”) has appealed a Determination which found that the employer owed Theresa Norton, (“Theresa”) \$325.18 for compensation for length of service.

### **ISSUES**

1. Did the Director err in concluding that Theresa had worked in excess of 3 months?
2. Did the Director err in finding that Hannah had not shown just cause to end Theresa’s employment?

### **ARGUMENT**

Hannah argues that Theresa’s employment would have been terminated during the first three months of her employment if Theresa had responded to the request to meet for her performance review meeting within the first three months. Hannah argues secondly that even if the three months had lapsed that Theresa was terminated for cause based on her performance on November 7, 1999.

### **FACTS AND ANALYSIS**

Theresa was hired as a weekend support worker to work nights. Her first shift was an orientation shift of 4 hours on July 11, 1999. Her first regular shift was July 24, 1999. Theresa signed a ‘Conditions of Employment’ document on July 11, 1999. This document set out her terms and conditions of employment and provided that “failure to adhere to these conditions may result in disciplinary action up to and including termination of my employment”.

Theresa was given a Client Care Plan for each of the residents in her care.

On her October 15, 1999 Time Sheet for the period September 25, to October 9, 1999 the Employer, Hannah, added a hand written note at the bottom which read “Pls make an app’t for 3 month review”. An appointment was made for October 31, 1999. This appointment was cancelled because Theresa was ill. The meeting took place on November 7, 1999.

During the meeting of November 7, 1999, Theresa recited an incident the previous shift that Hannah says influenced their decision to end Theresa's employment immediately. No compensation was paid for the length of service.

Hannah first argued that the three month employment period was extended to November 7, 1999 by Theresa's failure to make an appointment in a timely manner. Hannah argued in this appeal that the incident of November 7, 1999 was sufficient to warrant termination for cause and therefore no compensation was payable.

The relevant provisions of the *Employment Standards Act* is section 63 which provides as follows.

*Liability resulting from length of service*

**63 (1) After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week's wages as compensation for length of service.**

(2) *The employer's liability for compensation for length of service increases as follows:*

(a) *after 12 consecutive months of employment, to an amount equal to 2 weeks' wages;*

(b) *after 3 consecutive years of employment, to an amount equal to 3 weeks' wages plus one additional week's wages for each additional year of employment, to a maximum of 8 weeks' wages.*

(3) *The liability is deemed to be discharged if the employee*

(a) *is given written notice of termination as follows:*

(i) *one week's notice after 3 consecutive months of employment;*

(ii) *2 weeks' notice after 12 consecutive months of employment;*

(iii) *3 weeks' notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 weeks' notice;*

(b) *is given a combination of notice and money equivalent to the amount the employer is liable to pay, or*

(c) *terminates the employment, retires from employment, or is dismissed for just cause.*

- (4) *The amount the employer is liable to pay becomes payable on termination of the employment and is calculated by*
- (a) *totalling all the employee's weekly wages, at the regular wage, during the last 8 weeks in which the employee worked normal or average hours of work,*
  - (b) *dividing the total by 8, and*
  - (c) *multiplying the result by the number of weeks' wages the employer is liable to pay.*

I have highlighted the most relevant language in this section. Theresa's employment commenced with her first orientation shift July 11, 1999. Her last day of work was November 7, 1999. If Hannah intended to terminate Theresa's employment within the first three months, then the termination should have occurred before October 11, 1999. The invitation to meet was not prepared until October 15, 1999. There is no doubt that Theresa's length of employment exceeded 3 months.

From the evidence it appears that Hannah had some concerns about Theresa's performance, which would have been raised at the 3 month review meeting. In particular, Hannah was concerned about the "verbal disrespect" for the employer reported by others to Hannah.

As stated in the Determination, the Tribunal has held that the employer needs to inform an employee in clear and unequivocal language that the employee's conduct is unacceptable before taking the step of ending employment. The employee must be made aware that the failure to take steps to correct the offending conduct may result in the employment ending. The Tribunal will not find that there was just cause to end employment if the employee was unaware that their conduct was unacceptable to the employer.

The Employer did not provide any evidence of discipline or corrective action taken with respect to Theresa's performance during Theresa's employment.

Based on the evidence I must conclude that there was no cause to terminate Theresa's employment.

Based on these findings I find that the Director did not err in concluding that Theresa was employed for more than 3 months and was entitled to compensation for length of service. Hannah has not shown just cause within the meaning of section 63(3) the *Act* to entitle the employer to waive the requirement to pay compensation.

## **CONCLUSION**

Based on the evidence before me I do not find any error in the Determination. I deny the appeal.

**ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated October 30, 2000 be confirm(ed.)

***April D. Katz***  

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**April D. Katz**  
**Adjudicator**  
**Employment Standards Tribunal**

ADK/bls