

**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 -

B.N.J. Ventures Ltd. operating White Tower Pizza  
("White Tower")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** James E. Wolfgang

**FILE NO.:** 96/210

**DATE OF HEARING:** May 1, 1996

**DATE OF DECISION:** May 14, 1996

**DECISION**

**APPEARANCES**

<b>Vasilis Tiangaris</b>	<b>for B.N.J Ventures Ltd. operating White Tower pizza</b>
<b>Monique Weeks</b>	<b>witness for the appellant</b>
<b>Victoria Doyle</b>	<b>witness for the appellant</b>
<b>Gail Strothers</b>	<b>witness for the appellant</b>
<b>Andrea McEachern</b>	<b>witness for the appellant</b>
<b>Robert D. Krell</b>	<b>delegate of the Director of Employment Standards. (delegate)</b>

**OVERVIEW**

This is an appeal by B.N.J Ventures Ltd. Operating White Tower Pizza (“White Tower”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against Determination No. CDET #001435 issued by the Director of Employment Standards (the “Director”) on March 5, 1996. In this the employer claims that no severance pay is owed to Shelly Ann Gillies (“Gillies”).

**FACTS**

Gillies was employed at White Tower Pizza as a server from November 1, 1994 to July 22, 1995. On July 22 White Tower terminated her employment as a result of a telephone complaint by an unidentified customer.

On October 11, 1995 Gillies filed a compliant with the Branch claiming severance pay for the period she was employed.

A Determination was issued March 5, 1996 supporting Gillies claim for severance pay. The delegate had been unable to locate the customer who placed the compliant.

Following the Determination, White Tower successfully advertised in the local newspaper to locate the customer.

**ISSUE TO BE DECIDED**

Is Gillies entitled to severance pay for the time she was employed by White Tower?

## **ARGUMENTS**

This case did not proceed beyond an opening statement by the parties in attendance. I believe the evidence provided is sufficient to deal with the appeal.

White Tower claimed they had terminated Gillies for using course language in the presence of a customer and knowingly serving food to which the customer was allergic. They claim this was the last of a number of incidents in which they had warned Gillies of her conduct around customers.

An investigation was undertaken. At this time the customer had not yet been identified therefore not available for an interview. Based on the information presented at the time, the evidence did not support the position of just cause dismissal and a Determination was issued against White Tower.

Following the Determination, White Tower advertised in the local newspaper for the customer who complained to come forward. The customer responded to the ad and agreed to testify.

This information was supplied to the delegate on March 18, 1996. The delegate contacted Gillies, making her aware the customer had been located. From that time Gillies has not been available although the delegate has made every reasonable effort to contact her. This includes: mail to her last known address, which was returned by the Post Office, contacting her previous employer, and checking with B.C. Tel for a current listing.

Gillies did not appear at the hearing.

## **ANALYSIS**

In light of the latest development in this case, I find the weight of evidence now supports the action of White Tower. They had just cause for terminating Gillies.

**ORDER**

In Summary, I order under Section 115 of the *Act*, the Determination #001435 be cancelled. I find that White Tower did not contravene Section 63(2) of the *Employment Standards Act*. No further action to be taken.

*“James E. Wolfgang”*

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**James E. Wolfgang**  
**Adjudicator**  
**Employment Standards Tribunal**

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