



An appeal

- by -

Sunny's Clyde Inn Inc.
("Sunny's")

- 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 D. Katz

FILE No.: 2000/815

DATE OF DECISION: February 20, 2001

DECISION

APPEARANCES:

Anter Pamma on behalf of Sunny's Clyde Inn Inc.

Karen Travis on her own behalf

Judy McKay on behalf of the Director

OVERVIEW

In a Determination dated November 6, 2000, the Director of Employment Standards, the "Director", found that the Employer, Sunny's Clyde Inn Inc. ("Sunny's"), owed Karen Travis ("Travis") \$2,270.42 in compensation for length of service and vacation pay.

ISSUE

Did the Director err in finding that Sunny's owed Travis compensation for length of service?

ARGUMENT

Sunny's argues that they gave written notice to all their employees on April 1, 2000 that they had leased the restaurant effective July 15, 2000. Any employee who wished to continue employment would need to apply to the new managers of the restaurant.

Travis states that the first written notice she received of her employment ending was on July 3, 2000. She indicates that she had stayed in her position when management or ownership changed in the past.

FACTS

Travis was employed with Sunny's and its predecessors continuously from February 8, 1991 until July 15, 2000. Sunny's prepared a letter of termination dated July 3, 2000, which was given to Travis on July 3, 2000.

Sunny's prepared a letter of termination dated September 10, 2000 which was given to the Director's Delegate as evidence of notice of termination. Sunny's prepared a letter of termination

dated April 1, 2000 which was given to the Director's Delegate as evidence of notice of termination.

Travis's last day of work for which she was paid was July 15, 2000. She did not receive any additional compensation for length of service.

Travis filed a complaint with the Director that she was only given 12 days notice before the end of her employment.

EVIDENCE AND ANALYSIS

The onus is on the appellant in an appeal of a Determination to show on a balance of probabilities that the Determination ought to be varied or cancelled. To be successful the submissions from the appellant must demonstrate some error in the Determination, either in the facts accepted, or the conclusions reached or in the Director's analysis of the applicable law.

The appeal does not provide any new evidence to support the appeal.

The letter of appeal states:

“I do not agree to the calculation of the amount of wages owing to Karen Travis.

A written and verbal notice was given to all of my staffs well ahead of time.

Karen had personally agreed to this notice and conversation but she urged that she only requires two weeks of written work terminations notice since she was informed three months ahead of time.”

The Director's Delegate interviewed the two representatives of Sunny's and wrote to them asking for evidence to support their position. Sunny's sent copies of notices purporting to be a written notices that were dated April 1, 2000, July 3, 2000 and September 10, 2000. The notices are the same and state that the restaurant would be under new management on July 15, 2000 and if employees wish to continue to work they need to apply to the new managers.

Sunny's record of employment for Travis indicated that she had worked since November 1999 not February 1991.

The Director's Delegate did not receive any further information from Sunny's.

The records showed that Travis commenced work on February 8, 1991. The employer's evidence on Travis's commencement date was inaccurate.

Sunny's has not provided any specific evidence that Travis was given notice to end her employment prior to July 3, 2000.

Travis advised the Delegate that the only information she received was the letter of July 3, 2000 and that her employment actually ended on July 15, 2000. Travis had 12 days notice of the end of her employment. As a nine year employee Travis is entitled to the maximum 8 weeks compensation for length of service under section 63(2) of the *Employment Standards Act* (“Act”).

Where the evidence of the witnesses is in conflict the investigator of fact must make credibility finding on the basis of the available evidence. Sunny’s and Travis disagree about whether Sunny’s gave Travis written notice before July 3, 2000.

Sunny’s other evidence about the commencement of employment is not accurate. Sunny’s letter of termination has three dates on it without explanation. Based on the evidence submitted Sunny’s evidence is not reliable. Where, therefore, Sunny’s evidence is in conflict with Travis, the Delegate relied on the evidence from Travis.

On the evidence before me I find no error of fact or law in the conclusions reached in the Determination.

There is, in fact, no suggestion in the letter of appeal that there was an error of law in the Determination. Sunny’s has failed to meet the evidentiary burden on it to support a successful appeal. The appeal is denied

ORDER

Pursuant to section 115 of the *Act*, the Determination dated November 6, 2000 is confirmed.

April D. Katz

APRIL D. KATZ

Adjudicator

Employment Standards Tribunal