

**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 -

Allan W. Sproule Operating as Restech Food and Beverage Systems  
("Restech")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Niki Buchan

**FILE NO.:** 96/672

**DATE HEARING:** February 24, 1997

**DATE OF DECISION:** **March 11, 1997**

**DECISION**

**APPEARANCES**

Allan Sproule	For Restech
Dale Sproule	For Restech
Michael Taylor	For the Director
Yoseff Samchuk	For Himself
Torrie Miller	Witness

**OVERVIEW**

This an appeal by Restech against Determination No. CDET 004382 that determined an amount in the sum of \$ 996.97 was payable to Yoseff Samchuk (“Samchuk”) for non-payment of:

compensation for length service,  
statutory holiday pay,  
regular wages and overtime including vacation pay at 4%, and  
interest to October 15, 1996.

In the opening statement Restech admitted liability and agreed to pay statutory holiday and unpaid regular wages. After hearing evidence on unpaid overtime, Restech agreed to pay the overtime as set out in the Determination. It simply wanted to make it clear that the company does not pay unauthorized overtime.

That leaves only compensation for length of service on termination and interest being contested by Restech.

**ISSUE TO BE DECIDED**

Whether the temporary layoff notice of January 5, 1996 given to Samchuk resulted in a deemed termination pursuant to Section 63(2) or did he quit?

**FACTS**

Samchuk was originally hired by Fort Chelsea Holdings Ltd. (“Fort Chelsea”) in March 1993. He worked as a cook and his duties included cooking for the restaurant known as Clancy’s that was operated by Fort Chelsea. Restech assumed the operation of Clancy’s from Fort Chelsea about September 1994.

Samchuk received temporary lay off notice dated January 5, 1996. Restech expected to recall him after the winter slowdown; but, he was not recalled to Clancy's because it was sold on March 1, 1996.

While on lay-off Samchuk collected UIC benefits and studied for his journeyman certificate. His one month course session ended March 22, 1996. He started work at the Gathering Place restaurant on March 22, 1996 at a lower rate of pay than he received at Clancy's. That restaurant did not have a journeyman to supervise him as was required by his apprenticeship program. Torrie Miller, a journeyman, supervised him at Clancy's.

On March 5, 1996, a letter was prepared by Dale Sproule to notify Samchuk that Clancy's had been sold but the common employer company operating the George and Dragon required a cook. He was offered a job for 30 hours per week but this would go to 40 hours in the summer. This letter offering employment was given to Torrie Miller (the manager) to give to Samchuk. The letter was never mailed

## **ANALYSIS**

Restech did not contest the amount of severance pay that Samchuk would be entitled to receive if he is found to be terminated. The company argues that he quit when he did not take the job at the George and Dragon offered to him on April 5, 1996. Allan Sproule says he had a conversation with Samchuk about recall. He says that Samchuk told him that he wanted to study for his journeyman certificate and wanted to take time off as a break. When asked on cross examination whether he had received anything in writing from Samchuk saying that he did not want to come back to work, Sproule's response was that he never asked for it. Samchuk denies he spoke with Alan Sproule about returning to work.

The offer of employment at the George and Dragon was made in a letter from Dale Sproule that was given to the manager, Torrie Miller, to give to Samchuk. Torrie Miller was not examined on this point when giving evidence at the hearing. Samchuk's evidence is that he never received the written offer of employment and did not have a conversation with Torrie Miller about returning to work at the George and Dragon. He recalls a conversation with Mr. Miller at the time he was laid off. That discussion was about being recalled at a later date. Samchuk states that he would have taken the job at the George and Dragon had he known it was being offered to him. He argues that it does not make sense that he would take a lower paying job at another establishment that did not meet the requirements for supervision by a journeyman.

After considering all of these facts and arguments I have determined that on the balance of probabilities that Samchuk did not quit. He did not receive notice of recall to the George and Dragon. After 13 weeks the temporary layoff became a termination of employment. Section 63(5) states: "For the purpose of determining the termination date, the employment of an employee who is laid off for more than a temporary layoff is deemed to have been terminated at the beginning of the layoff." I conclude that Samchuk by operation of Section 63(5) is therefore deemed to have been terminated on

January 5, 1996 without written notice. He is entitled to length of service compensation as set out in the Determination.

**ORDER**

In summary, I order under Section 115 of the *Act*, the Determination No. 004382 be confirmed in the amount of \$ 996.97 together with whatever interest may have accrued since the date of issuance pursuant to Section 88 of the *Act*.

**Niki Buchan**  
**Adjudicator**  
**Employment Standards Tribunal**