

**EMPLOYMENT STANDARDS TRIBUNAL**  
In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act R.S.B.C. 1996, C. 113*

- by -

Roma Ribs Limited  
(the “Company”)

- of a Determination issued by -

The Director Of Employment Standards  
(the “Director”)

**ADJUDICATOR:** Richard S. Longpre

**FILE NO.:** 1998/736

**DATE OF HEARING:** February 19, 1999

**DATE OF DECISION:** March 12, 1999

**DECISION**

**APPEARANCES**

Mr. Dan Boate	For the Company
Mr. Shane McGovern	For the Company
Mr. Rob Brown	For the Company
Mrs. Diane Schultz	On her own behalf
Mr. Mike Schultz	For Mrs. Schultz

**OVERVIEW**

This is an appeal by the Company filed pursuant to Section 112 of the *Employment Standards Act* seeking review of a Determination issued by the delegate of the Director of Employment Standards. Mrs. Schultz was employed by the Company for almost eight years. During her shift on Friday, August 21, 1998 she was given eight weeks notice of her termination. Events at the end of her shift lead to her termination of employment on Monday, August 24, 1998.

Mrs. Schultz filed a complaint with the Branch. On October 30, 1998, the delegate issued her Determination (No. 029-343) in which she found that Mrs. Schultz's employment was terminated without just cause - a breach of Section 63 of the *Act*. Based on her length of service, vacation pay and interest, the Determination concluded that the Company owed Mrs. Schultz a total of \$3,176.91.

On November 20, 1998 the Company appealed that Determination. The Company argued that Mrs. Schultz was not terminated: she voluntarily quit her job.

**ISSUE TO BE DECIDED**

The issue is whether the Company met the onus in proving that the Determination erred in concluding that Mrs. Schultz was terminated on August 24, 1998 without just cause.

**FACTS**

Mrs. Schultz had worked at the Company's restaurant for close to eight years. Throughout this period, Mrs. Schultz had been an excellent employee. Recent economic pressures required the management of the restaurant to take steps to improve the efficiency of operations. The restaurant was required to maintain the level of business specifically, with a reduction in the hours that its employees were employed. In doing so, it found that Mrs. Schultz was not willing or able to respond positively. Management spoke to Mrs. Schultz about this on a few occasions. On Friday, August 21, 1998 the Manager, Mr. Boate, was away from the restaurant. Mr. McGovern, Kitchen Manager, decided that it was appropriate to give Mrs. Schultz eight weeks notice of her termination. Mr. McGovern felt that it was fair to give her eight weeks to find other employment. After being told, Mrs. Schultz telephoned her husband and requested a ride home. Apparently one of her sons was at home at the time of her call and was told that his mother

and been given notice. He decided to go to the restaurant and ask Mr. McGovern why his mother had been terminated.

When Mr. Schultz arrived, he told Mrs. Schultz that their son intended to come to the restaurant. Mrs. Schultz insisted they wait in the car until their son arrived and to ask him not to go into the restaurant. Their son arrived and despite their requests he went in to talk to Mr. McGovern. From Mrs. Schultz's and Mr. McGovern's submissions, I have no doubt that the discussion quickly degenerated into a confrontation. Soon after, the Schultzs left and Mr. McGovern called the RCMP. After talking to Mr. McGovern, the RCMP talked to Mrs. Schultz. She assured the RCMP a similar incident would not happen again. The RCMP passed that assurance on to the Company.

I understand that Mrs. Schultz's other son also went to the restaurant but he did not go in nor did he talk to Mr. McGovern.

Over the weekend Mr. Boate discussed Friday's events with the employees who had been present on Friday evening. On Monday, Mr. Boate was at the restaurant and talked to Mrs. Schultz at the beginning of her shift. Mr. Boate said that he wanted to meet with Mrs. Schultz and resolve the problems from the previous Friday. He hoped that she would continue to work out her notice. In his written appeal submission, Mr. Boate explained their discussion:

On Monday August 24, 1998, during my meeting with Diana [Mrs. Schultz] I asked Diana if she would be able to honour the spirit of the notice by working in a cooperative manner, in the allotted time allowed, and would not refuse to perform specific duties we asked of her. As a footnote, I said I would also like her assurance that there would be no further threats of physical violence towards any staff or management member. Diana was asked three separate times to work out her eight-week notice, but as all three requests were met with no response, I concluded at that time that she was not about to cooperate in any way, shape, or form. I then told Diana that there was no point continuing the argument, and I concluded the meeting. Diana then asked repeatedly "Does that mean I'm fired?", and finally my response was "You can call it what you want" and asked her to call me if she changed her mind.

During the hearing, Mr. Boate said that he was satisfied with the assurance Mrs. Schultz gave through the RCMP regarding Friday's events. He emphasized that he gave Mrs. Schultz the opportunity to assure him that over the next eight weeks she would work up to the standard set by the Company. Previous discussions had not resulted in her maintaining the standard. Mrs. Schultz refused to assure him on Monday. In his view, Mrs. Schultz could have given him that assurance and could have continued to work; in refusing to do so, she terminated her own employment.

Mrs. Schultz said that she assured the RCMP The Company was told of her assurance. She believed that Mr. Boate knew that from her past years of employment she would continue to work hard. She also noted that in July 1998 she had worked less than 40 hours per week. In August 1998, the Company recognized the workload and increased her hours

of work. By August 21, she was working 40 hours per week and maintaining the work standard that she had worked for the previous years.

**ANALYSIS**

The Company argued that it had just cause to terminate Mrs. Schultz on August 24. The Company made it clear in the hearing, however, that the discussions prior to August 21, the events on August 21 and the meeting on August 24 did not result in Mrs. Schultz's termination by the Company. The Company requested Mrs. Schultz to give them assurance that she would work as expected and the Friday events would not occur again. She refused to give those assurances. Mr. Boate saw that refusal as a quit. The Company based its case on Mrs. Schultz's decision to terminate her own employment.

I understand the Company's argument. Mrs. Schultz's statements and the questions she asked at the August 24 meeting did not answer Mr. Boate's questions. Mrs. Schultz could have easily given her assurance on Monday that she would work to the standard she had met for the previous eight years.

I agree with the delegate, however, that Mrs. Schultz did not terminate her own employment. Mrs. Schultz was not permitted to work because she would not answer Mr. Boate's questions; she was terminated. The Company had the onus to establish just case for terminating Mrs. Schultz. On its own submissions, it never attempted to prove that case.

The delegate's calculation of money owed was based on Mrs. Schultz working an average of 40 hours over the past eight weeks. At the hearing, the parties agreed that she had worked an average of 34.6 hours over the previous eight weeks. She had completed seven years work with the Company. At a wage rate of \$9.25 per hour, Mrs. Schultz is owed \$2240.35.00 in wages, \$134.21 in vacation plus interest as calculated under Section 88 of the *Act*.

**ORDER**

In accordance with Section 115 of the *Employment Standards Act* the delegate's Determination is varied. The Company owes Mrs. Schultz \$2374.56 plus interest.

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**Richard S. Longpre**  
**Adjudicator**  
**Employment Standards Tribunal**