

**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 -

Douglas Harding and Deborah Harding operating as Decadence Gourmet Foods  
and Catering  
(" Decadence ")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Carol Roberts

**FILE No:** 2000/9

**DATE OF HEARING:** March 8, 2000

**DATE OF DECISION:** March 9, 2000

**DECISION**

**APPEARANCES:**

For the Director:	No one appeared
For Decadence Gourmet Foods and Catering:	Douglas and Deborah Harding
Garnette Blackie:	On her own behalf

**OVERVIEW**

This is an appeal by Douglas and Deborah Harding Operating Decadence Gourmet Foods and Catering ("Decadence"), pursuant to Section 112 of the Employment Standards Act ("the Act"), against a Determination issued by the Director of Employment Standards ("the Director") December 14, 1999. The Director's delegate found that Decadence had contravened Section 63 of the Act, and Ordered that it pay Garnette Blackie ("Blackie") the sum of \$580.56 as compensation for length of service.

**ISSUES TO BE DECIDED**

At issue is whether Blackie's employment was terminated for cause.

**FACTS**

Blackie was employed by Decadence as a baker from August 1997 to April 27, 1999. Blackie alleged that her employment was terminated without written notice and that she was not paid compensation for length of service.

During the investigation of Blackie's complaint, Decadence provided the Director's delegate with records as requested, as well as several written submissions outlining the reasons for termination.

Decadence contended that Blackie had been terminated for "just cause."

After reviewing all of the evidence, the Director's delegate concluded that Decadence had not established just cause to terminate Blackie's employment. He determined that although Decadence had concerns about Blackie's employment, he found no clear evidence that she had not been adequately warned that her job was in jeopardy, and that none of the situations were, on their own, sufficiently serious to justify dismissal without notice.

The delegate found that Decadence had failed to provide evidence supporting just cause termination, and as such, had not met the onus of proof. Blackie's claim for wages was allowed.

**DECISION**

Decadence argues that Blackie was terminated for "very obvious" and ongoing concerns. The Hardings say that Blackie was spoken to on several occasions regarding her performance, to no avail.

The Hardings state that they contacted the Employment Standards Branch for advice on how to deal with Blackie, and were advised to document their problems. They acknowledge that they erred in failing to have the documentation signed by Blackie. They contend, nevertheless, that there were many witnesses to the facts, and included several witness statements with the appeal.

The balance of the written appeal documentation repeats the submissions made to the Director's delegate.

At the hearing, the Hardings identified two documents which they say constituted written warnings to Blackie. One was a handwritten note outlining her duties. This note might be said to be akin to a job description. It contains no information about job standards, or any other information that could be considered to be a warning about job performance.

The other document consisted of handwritten notes of matters discussed at a meeting between Ms. Harding and Blackie on March 2. Blackie acknowledged the accuracy of the notes, and that Ms. Harding expressed concerns about her job performance at that time. However, she contended that she was never told that her job was in jeopardy at that or any other time.

**ANALYSIS**

The burden of establishing that a Determination is incorrect rests with an Appellant. On the evidence presented, I am unable to conclude that burden has been met.

The Director's delegate found that Decadence had failed to provide clear evidence (emphasis in determination) that Blackie had been warned that her employment was in jeopardy by a continued failure to meet an expected standard.

The evidence on appeal largely repeats the information provided to the Director's delegate. While I agree that it is unfortunate that the employer might have been given inadequate advice on how to deal with an employee it perceives to be a problem, I am unable to conclude, on the evidence presented, that the delegate's determination is in error.

**ORDER**

I Order, pursuant to Section 115 of the Act, that the Determination dated December 14, 1999 be confirmed together with whatever interest that may have accrued since that date.

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**Carol Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**