



An appeal

- by -

Gold Rush Pizza Inc. Operating as Domino's Pizza
(“Gold Rush”)

- 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: M. Gwendolynne Taylor

FILE No.: 2000/820

DATE OF DECISION: March 14, 2001

DECISION

SUBMISSIONS:

Gary Josefczyk	on behalf of Gold Rush Pizza Inc., employer/appellant
Chris Wood	on his own behalf, employee/respondent
Judy McKay	on behalf of the Director of Employment Standards

OVERVIEW

This is an appeal by Gold Rush Pizza Inc. (“Gold Rush”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a determination dated November 8, 2000 (#ER 72-996) by the Director of Employment Standards (“the Director”).

In the determination the Director found that Gold Rush terminated the employment of Christopher Wood (“Wood”) without just cause and that Gold Rush owed Wood \$1,336.91 as compensation for length of service. This amount includes 2 weeks wages, vacation pay and interest to November 8, 2000.

Gold Rush appealed the Director’s determination on the grounds that Wood was terminated because of unsatisfactory work performance. However, if the Tribunal finds Wood is entitled to compensation for length of service, it should be limited to one week because he did not start working for Gold Rush until February 11, 2000.

ISSUE

Did the Director err in finding that Wood was fired without just cause and entitled to compensation based on 2 weeks’ wages, pursuant to section 63 of the *Act*?

ARGUMENT

The information before the Director was that Gold Rush operated several Dominos Pizza restaurants and that Wood worked as a manager from September 1998 until May 29, 2000. Before the Tribunal, Gold Rush submitted that Gold Rush purchased the Dominos Pizza franchise from Barker’s Pizza and that Wood worked for Gold Rush only from February 11, 2000. It is not apparent that Gold Rush made this submission to the Director.

Gold Rush maintained Wood was terminated for cause for failure to ensure that a school order for lunch pizzas was delivered on time and for waiving payment of the bill. Gold Rush provided the Tribunal with what appears to be an extract from an agreement for purchase and sale of a

Dominos's Pizza franchise and an extract from a Dominos's brochure for their school lunch program. Gold Rush said Wood had been given a verbal warning prior to this incident and that, in any event, it was a manger's responsibility to be familiar, and comply with, company policies and procedures.

The Director noted that the onus is on an employer to show just cause for a dismissal without notice or compensation in lieu. Dismissal without notice is justified only by serious misconduct. The Director set out criteria for employers to show just cause and emphasized that an employer must specifically tell an employee that continued failure to meet acceptable standards of performance would result in dismissal.

The Director found that there was quite a bit of confusion among some Dominos's managers over the company policy on late deliveries and payment and who had the authority to decide if an order would be free. The Director found that there was no evidence to support Gold Rush's contention that Wood had been deliberately late or that he had been warned his employment was in jeopardy.

The Director submitted that section 97 of the *Act* provides that employment is continuous in the event of the sale of a business. Further, section 4 provides that an agreement to waive requirements of the *Act* is of no effect.

Wood's position was that when orders were more than 30 minutes late, the company policy was that the order would be free. He said that was the policy in 3 other Dominos franchises he had worked for. He acknowledged that he had previous discussions with the employer about a couple of late deliveries, but he was not informed that his employment was in jeopardy. He submitted that he had made a mistake that cost the company money but that the mistake was not significant enough to be job threatening.

ANALYSIS

It appears that Gold Rush did not present extracts from the sale agreement or lunch program during the Director's investigation. That raises the question of whether the Tribunal should accept new evidence. Generally, the Tribunal does not permit parties to present new evidence, particularly if the evidence was available and could have been produced to the Director. I see no reason to allow new evidence in this case. The Director conducted a comprehensive investigation during which there was ample opportunity for Gold Rush to provide documents.

Additionally, I note that the extract from the sale agreement is not conclusive. There is nothing to suggest that employees were privy to the agreement or that this extract is from this sale. There is no evidence to support Gold Rush's contention that employees were terminated and re-hired by the new company. I find that Wood's employment was continuous during the sale, by operation of sections 97 and 4.

The Director's determination on the late delivery and payment issue was based on evidence from Dominos' managers. It is apparent that, despite the lunch program brochure, there was significant confusion over company policy.

I find that the evidence supports the Director's Determination that Wood was fired without just cause and that compensation for length of service should be based on 2 weeks wages.

ORDER

I confirm the Director's determination and dismiss the appeal.

M. GWENDOLYNNE TAYLOR

M. Gwendolynne Taylor
Adjudicator
Employment Standards Tribunal