

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 -

Bentley Pacific Communications Inc.
operating Zeta's Cafe
("Zeta's")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 96/246

DATE OF DECISION: **July 16, 1996**

DECISION

OVERVIEW

This is an appeal by Bentley Pacific Communications Inc. d.b.a. Zeta's Cafe ("Zeta's"), pursuant to Section 112 of the *Employment Standards Act* ("Act"), against Determination No. 001475 which was issued by a delegate of the Director of Employment Standards on March 8, 1996. The Determination found that Zeta's owed two weeks' wages to John Shaw ("Shaw") as compensation for length of service under Section 63(2) of the *Act*.

ISSUE TO BE DECIDED

Is Shaw entitled to compensation for length of service under Section 63(2) of the *Act*?

FACTS

The Determination shows that Shaw was employed by Zeta's as a cook from July 6, 1994 to December 31, 1995. The Reason Schedule attached to the Determination contains the following statement:

The employer has acknowledged that the employee was not given any notice of termination but should have known the restaurant was experiencing financial difficulties.

Zeta's provided the Tribunal with lengthy reasons for its appeal, from which I can extract the following relevant points:

- There was some discussion during December, 1995 that the restaurant would reduce its operations;
- The restaurant stopped serving lunch on December 23, 1995;
- Shaw's last day of work was December 27, 1995;
- The restaurant was closed from January 1 to January 5, 1996 for maintenance;
- Shaw contacted a staff member on January 7, 1996 to check if he was scheduled to work when the restaurant re-opened;
- The Restaurant ceased operations on January 7, 1996 "...due to financial partners cutting funds and other matters not for this report."

The Tribunal provided Zeta's with a copy of all documents submitted to it by the Director's delegate. Zeta's reply (dated June 26, 1996) contains the following statement:

Mr. Shaw received all his severance (holiday pay) owing in December as per his request. He did not receive his ROE at that time as it was agreed he would work whatever hours we could offer during January prior to his going back to at school in February, 1996.

ANALYSIS

Section 63(2) of the *Act* states that an employer is liable to pay an employee compensation for length of service. After 12 consecutive months of employment, that compensation amounts to 2 weeks' wages. The liability is discharged if the employee is given written notice of termination by the employer or if the employee resigns, retires or is dismissed for just cause.

The facts of this appeal show that Shaw did not resign or retire, nor was he dismissed for just cause. There is nothing in the two lengthy submissions from Zeta's to suggest that Shaw was given written notice as required under Section 63 of the *Act*.

ORDER

I order, pursuant to Section 115 of the *Act*, that the Determination be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC:sr