

An appeal

- by -

Christine Heal

- 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:** April D. Katz

**FILE No.:** 2001/864

**DATE OF HEARING:** April 3, 2002

**DATE OF DECISION:** May 8, 2002

## DECISION

### APPEARANCES:

Christine Heal	on her own behalf
Christie Thompson and Robin Thompson	on behalf of Happy Time Kennels Ltd.

### OVERVIEW

On May 9, 2001 Christine Heal, (“Heal”), the Appellant, had a confrontation over working conditions with a director of her employer, Happy Times Kennels Ltd., (“Happy Times”). Christie Thompson, one of the two directors of Happy Times, told Heal that her employment was at an end and that Heal was to leave the work place immediately. Heal filed a complaint with the Director of Employment Standards, (the “Director”) and the Human Rights Commission alleging that her conditions of employment were changed and her employment was terminated because she was pregnant. The Director’s Determination concluded that Happy Times had not breached the *Employment Standards Act* (“Act”).

This Decision addresses Heal’s appeal of the Determination under the *Act* exclusively. The Human Rights Act complaint is not part of these proceedings. This appeal came before the Tribunal at an oral hearing.

### ISSUE

There are two issues on this appeal.

1. Did Happy Times change Heal’s working conditions because of her pregnancy contrary to the Act?
2. Did Happy Times end Heal’s employment because of her pregnancy contrary to the Act?

### FACTS

The parties agree on the most of the facts in this Appeal. Heal commenced her employment with Happy Times on April 3, 1998. Happy Times is a kennel for cats and dogs. The employees work shifts to cover extended day shifts, seven days a week. The directors, the owners of the business, live on site and normally cover the nightshift. When the directors are away the staff cover the night shifts as well. The work schedules are prepared by one of the directors.

Happy Times is busier in the summer season than in the winter and requires more staff. One staff member is full time and the rest are part time. The part time staff are assigned more shifts in the busy summer season.

In April 2000 the staff were asked to cover nights and days for the directors who went on a three week vacation. When the directors returned the other staff did not want to ask for overtime pay for overtime worked. Heal raised the issue with one of the directors on behalf of all the staff who were affected. Happy Times paid the overtime requested.

After this request and payment Heal felt she was assigned fewer shifts than she had in the past. When the pattern continued she felt the need to supplement her income. She sought and found a second position in January 2001. The new position required Heal to walk dogs on Thursdays and Fridays. She received a higher rate of pay with the new employer but fewer total hours.

Heal realized she was pregnant in early 2001. She was reluctant to tell Happy Times about her second position and her pregnancy. She delayed disclosing the situation until February 9, 2001. Happy Times was very supportive when Heal disclosed her condition. Heal's work assignments were adjusted to prevent her from having to clean the cattery due to the risk of toxoplasmosis. Happy Times thought the risk associated with the cattery ended at the end of the first trimester of Heal's pregnancy. This understanding was not corrected until the investigation of the complaint.

Heal did not ask specifically for Thursdays and Fridays off when she first disclosed that she had a second position. When she did tell Happy Times that she had another position on Thursdays and Fridays, Happy Times said they would try not to schedule her on those days but they could not promise to meet that commitment. Heal worked four Fridays and one Thursday in January and February. She did not work either day in March. She worked one Friday in April.

Happy Times spoke to Heal about her departure date and other possible changes to her work assignments but Heal assured Happy Times that she was fully capable of doing all the work except the cattery. She indicated she planned to work as long as possible. No date or month was confirmed for her departure.

In April 2001 the full time employee left her employment and the Happy Times started to recruit for her position and more staff for the summer period. Heal felt that Happy Times was preparing to replace her before she was ready to leave. The expectation was that the new person would start in early May. The new staff person did not start as planned and that meant Happy Times was short staffed.

When Heal arrived at work on May 9, 2001 she was told to clean the cattery. She also saw the June schedule assigned her work on Thursdays and Fridays. The directors were away for most of the day and Heal became more and more agitated as the day progressed. Her colleague actually cleaned the cattery.

As soon as she could Heal arranged to speak to one of the directors. She expressed her unhappiness with being asked to clean the cattery and became very agitated about the risk to her pregnancy from toxoplasmosis. The director stated that Heal would not be asked to clean the cattery after a voluminous exchange. The director had felt it was a reasonable assignment in fairness to the other employees sharing duties because she did not know the risks continued after the first trimester.

Heal went on to raise the issue of the schedule expecting her to work Thursdays and Fridays. The director repeatedly asked Heal if she was refusing to work Thursdays and Fridays. Heal felt threatened. She felt she had demonstrated in the past that she could accommodate the occasional Thursday or Friday but she would not be able to continue her other employment if she had to be available for Happy Times. Heal knew her income was higher from the other position but she liked her work at Happy Times. In the heat of the exchange Heal affirmed that she would not work Thursdays or Fridays. After making this statement Happy Times ended Heal's employment and asked her to leave the site immediately.

## **ANALYSIS**

In an appeal the evidentiary burden is on the appellant to show that the Director's Determination was in error.

This appeal is based on the conclusions reached about the discussion between the parties on May 9, 2001. There are two issues. One issue is the accommodation of Heal's pregnancy in not assigning her to clean the cattery. The second issue is scheduling Heal to work on Thursdays and Fridays. The Determination found that Happy Times was prepared to accommodate Heal's pregnancy with regard to the cattery, but Happy Times was not prepared to give Heal Thursdays and Fridays off during the summer to work at another job.

The conclusion on the first issue was supported by the previous conduct of Happy Times in assigning someone else to clean the cattery. Until May 9, 2001 Heal had been relieved of that work. The Delegate accepted that Happy Times had misunderstood the risk was prepared to continue this accommodation. Heal did not believe Happy Times said they would continue this accommodation. This conclusion was not disputed at the hearing. There was no evidence at the hearing to suggest that this was not in fact what happened.

There was no suggestion in the evidence before me that accommodating Heals' working conditions in respect of the cattery caused Happy Times to end her employment. I find no error in the Determination in this finding of fact.

The second issue arose as a result of accommodating Heal's schedule with another employer. The Determination found that this issue between the parties lead to Heal's employment ending. This issue is not one related to her pregnancy. The existence of the second position was unrelated to Heal's pregnancy. The *Act* does not require an employer to accommodate another employer's need for an employee.

Heal submitted a number of human rights cases in support of her appeal. The standards and issues under the *Human Rights Act* are different than the issues and tests under the *Employment Standards Act*.

The Director's Delegate reviewed the evidence and concluded that Happy Times had ended Heal's employment without breaching the *Act*. I do not find anything in the evidence before me that would suggest that the Delegate erred.

## CONCLUSION

Based on the evidence presented I find no basis on which to vary or cancel the Determination. Heal has not discharged the onus on her to demonstrate an error in the Determination. I deny the appeal and confirm the Determination

## ORDER

Pursuant to section 115 (1)(a) of the *Act*, the Determination dated November 15, 2001 is confirmed.

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**April Katz**  
**Adjudicator**  
**Employment Standards Tribunal**