

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 -

Charlene Ellahib operating as
Piazza Pizza
("Piazza")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: David B. Stevenson

FILE No.: 2000/149

DATE OF DECISION: May 2, 2000

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Charlene Ellahib operating as Piazza Pizza (“Piazza”) of a Determination that was issued on February 14, 2000 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Piazza’s had contravened Section 63 of the *Act* in respect of the employment of Akemi Hanson (“Hanson”) and ordered Piazza to cease contravening and to comply with the *Act* and to pay an amount of \$342.01. Piazza disagrees with the conclusion that they did not have just cause for dismissing Hanson.

The appeal was delivered to the Tribunal one day past the time limited for appeal under the *Act*. The Tribunal has exercised its discretion under Section 109(1)(b) to extend the time limit and consider the merits of the appeal. The Tribunal has also concluded that the merits of this appeal can be considered without an oral hearing.

ISSUES TO BE DECIDED

The issue is whether Piazza has shown that Hanson was dismissed for just cause and was not entitled to length of service compensation.

FACTS

I have reviewed Piazza’s appeal submission, their September 10, 1999 submission to the delegate and the Determination. All of the facts relevant to the appeal are set out in the Determination. Apart from providing some additional detail relating to Hanson’s final weekend of employment, the appeal submission does no more than restate the facts provided to the investigating officer in Piazza’s September 10, 1999 submission. It is not necessary for the purposes of this decision to set out the facts again.

Some additional allegations of fact did creep into the appeal in the reply submission of Hanson, which were answered by Ms. Ellahib, but those allegations were unrelated to the issue raised in this appeal.

ANALYSIS

The onus on Piazza in this appeal is to show on a balance of probabilities that the Determination ought to be varied or canceled. It is obvious that Piazza disagrees with the result of the Determination, but if Piazza is to be successful in its appeal, it must demonstrate some error in the Determination, either in the facts accepted, or the factual conclusions reached, or in the Director’s analysis of just cause under the *Act*. The appeal provides little in terms of stating the reasons for the appeal. Nowhere does the appeal specifically state why the Determination is wrong or state clearly the reasons for Piazza making the appeal. In its appeal Piazza does say:

Presently I am feeling that my words have not been taken with any serious consideration.

I will say at the outset that there is nothing in the material that would support that concern. The Determination contains a comprehensive analysis of the factual assertions made by Piazza in the context of just cause under the *Act*. No part of their position was overlooked or ignored. Each conclusion made in the Determination was rationally supported by reference to principles and policies emanating from the interpretation and application of the just cause provisions under the *Act*.

The Director, in a reply submission dated March 15, 2000, makes the following point:

The appellant seeks to retry the entire determination in its entirety on appeal. The appellant has restated her case, but has not provided any evidence which would prove the determination to be wrong.

I agree that the above statement is a correct characterization of the appeal. The appeal simply restates the factual assertions made by Piazza to the investigating officer in their September 10, 1999 letter. No new relevant facts have been added nor has it been shown that the Determination incorporated and relied on incorrect or irrelevant facts. In effect, all that has been done in this appeal has been to place the same facts before the Tribunal and ask for a different result. The appeal process is not an avenue for second guessing Determinations and Piazza has not met the burden of showing the Determination is wrong and ought to be canceled.

The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determinations dated February 14, 2000 be confirmed in the amount of \$342.01, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal