

An appeal

- by -

Millicent Ruth Forrest operating as Proficiency Plus Foodservice & Consulting  
(the “Employer” or the “Appellant”)

- 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:** Ib S. Petersen

**FILE No.:** 2003A/127

**DATE OF DECISION:** July 8, 2003

## DECISION

### FACTS AND ANALYSIS

This is an appeal by Ms. Forrest, pursuant to Section 112 of the *Employment Standards Act* (the “Act”), of a Determination of the Director issued on April 4, 2003. The Determination concluded that Ms. Forrest owed wages, overtime, vacation pay and compensation for length of service to four employees, Ms. Kathleen Fisher (\$112.31), Ms. Jeanette Hamel (\$355.43), Ms. Lauren Harrison (\$234.46) and Mr. Glenn Woods (\$469.39) (the “Employees” or the “Complainants”). The Determination also imposed a \$500.00 penalty for contraventions of Sections 18 and 63.

In my view, the material facts are not generally in dispute. Ms. Forrest operated a restaurant in Prince George, British Columbia. The Delegate found that she closed the restaurant on February 11, 2003. She says she turned it over to “new owners.” The Delegate found that the landlord made a deal with one of the former employees, Mr. Mike Godwyn, to re-open the restaurant a few days later, on February 13. The Complainants told the Delegate that Mr. Godwyn is the boyfriend of Ms. Forrest’s daughter. Mr. Godwyn provided a home address for Ms. Forrest.

On March 19, 2003, the Delegate wrote to Forrest, advising her of the complaints. The letter was sent--by registered mail--to the business address and the home address provided by Mr. Godwyn. The letter was returned by the post office marked “no such address.” Not having received any response from the Employer, the Delegate based his calculations on the information provided by the Complainants.

Ms. Forrest’s appeal does not take issue with the award to Ms. Harrison and Mr. Woods. She says, however, that Ms. Fisher and Ms. Hamel provided “false information” and that she has records to show that they were paid what they were owed. She alleges that she had cause for terminating these two employees. She claims that “previous attempts to notify [her] ... were never received due to some very inconsiderate people.”

The Delegate argues, among others, that even if she did not actually receive the demands for information, they were deemed to have been delivered to the Employer’s “last known address.”

Ms. Forrest received the Determination; sent by registered mail to the Employer’s business address, namely “Millicent Forrest operating as Proficiency Plus Foodservice and Consulting, 1550 Victoria St., Prince George, B.C., V2L 2L3.” The demands for information were sent to this address. In my view this is generally sufficient in light of Section 122 of the *Act* which provides, in part:

- 122.(1) A determination or demand that is required to be served on a person under this Act is deemed to have been served if
- (a) served on the person, or
  - (b) sent by registered mail to the person’s last known address.

I think that the responsibility is on the Employer to ensure that mail is received, even if the business was abandoned--or turned over to someone else, and, in my opinion, the demands were properly served. In the instant case, I also consider that the Delegate also attempted to mail Ms. Forrest at a home address, provided by the subsequent operator of the restaurant. In this case, there is no dispute that the restaurant

was subsequently operated, in the same premises, by the boyfriend of Ms. Forrest's daughter, Mr. Godwyn. As well, her daughter worked in the restaurant. These circumstances, set out in the Determination, remain unexplained by the Appellant.

In my view, the time to raise the concerns about time cards, false claims, and just cause for termination is before the Delegate, not on appeal. The evidence, such as it is, was available at the time the Determination was made. The Appellant had a reasonable opportunity to raise it, and her concerns, with the Delegate and I will not consider the merits of her appeal.

I dismiss the appeal.

### **ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated April 4, 2003, be confirmed.

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**Ib S. Petersen**  
**Adjudicator**  
**Employment Standards Tribunal**