

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 -

Yvonne Hourigan operating Farmers in the Dell DayCare
("Farmers in the Dell DayCare")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Niki Buchan

FILE NO.: 98/90

DATE OF HEARING: May 15, 1998

DATE OF DECISION: June 18, 1998

DECISION

APPEARANCES

Wanda Carter	For Herself
Carl Carter	Witness
Voichita Partik	Observer
Yvonne Hourigan	For Farmers in the Dell DayCare
Kathrine Foster	Witness
Claire Michelan	Witness

OVERVIEW

This is an appeal by Wanda Carter, pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination of a delegate of the Director of Employment Standards (the “Director”) issued on January 23, 1998. In this appeal, Wanda Carter claims that she is owed compensation for length of service because she did not quit her position at the Farmers In the Dell DayCare but was terminated without proper notice or compensation.

This Decision is based on submissions from the parties and oral evidence given at the hearing.

ISSUES TO BE DECIDED

Whether Wanda Carter is entitled to compensation of length of service?

FACTS

Wanda Carter (“Carter”) was hired by Farmers In the Dell DayCare on June 1, 1994. At the time of her termination, she was employed in the position of Daycare Supervisor.

On June 20, 1998, Yvonne Hourigan (“Hourigan”) spoke to Carter about complaints from parents and not getting along with other staff. She informed Carter that this was the last time she was prepared to tolerate complaints of this nature and something must be done. She told Carter to think the matter over during the weekend and to meet with her on Monday, June 23rd. Carter claims she was told to quit or be fired. Hourigan denies she made this statement. After that conversation, Carter started removing items from the board and packing her belongings which were later removed by her husband. While she was packing, Kathrine Foster, another employee, asked her what was wrong to which she mumbled “I am sick of this, I quit”. Hourigan was informed that she had removed items and had left the daycare premises.

Over the weekend, Carter removed all of her belongings from the daycare.

On the assumption that Carter may not show up for work on the Monday, arrangements were made for another employee to attend and open the daycare. At 6:05 am on June 23, 1998, Carl Carter telephoned to inform Hourigan that his wife was sick and would not report for work because she was to see a doctor. Claire Michelan, Hourigan's mother, took this call. She informed Hourigan and confirmed with the replacement employee that she must open the daycare at 7:00 am.

Hourigan did not believe that Carter was ill and telephoned her to request she come in to discuss the matter and "face the music". During that call, Carter requested that she be laid off so that she could collect UIC payments. Hourigan refused to lay her off and told her that she couldn't lay her off because she needed qualified staff at the daycare. She asked her to return to work and face the music. Carter refused to return and said her doctor wouldn't let her come to work. Hourigan stated, "I guess you have quit" and she responded "yes, I guess I have". Carter later telephoned Hourigan at approximately 7:00pm on June 23rd to inform her that she refused to quit. Carter asked about severance pay and Hourigan told her she would not get paid because she had quit.

ANALYSIS

Section 63 of the "Act" sets out a liability on an employer to pay compensation to an employee based on length of service on termination of employment. Given written notice, payment if there is no notice or a combination of notice and payment can discharge that liability. Also, the liability is deemed to be discharged if the employee has terminated her employment. In this case, Carter indicated to another employee that she had quit her job and removed her belongings from the premises on June 20th and over the weekend. On June 23rd, she refused to come to work when requested to return to discuss her problems. When Hourigan suggested that she had quit, her answer was "I guess I have." Only later that day did she telephone to say that she refused to quit her position.

I have determined that the evidence from Hourigan and Foster to be the most credible and that Carter did quit her position. The Determination decision is a reasonable one.

ORDER

Pursuant to Section 115 of the Act, I order that the Determination, dated January 23, 1998, be confirmed.

Niki Buchan
Adjudicator
Employment Standards Tribunal