

**BC EST # D230/96**

**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 -

JFL Ventures Ltd.  
("JFL")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** David Stevenson

**FILE NO.:** 96/439

**DATE OF DECISION:** September 12, 1996

**DECISION**

**OVERVIEW**

This appeal is brought pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by JFL Ventures Ltd. (“JFL”) of a Determination, No. CDET 003203, dated July 5, 1996, of a delegate of the Director of the Employment Standards Branch (the “Director”). That Determination found the appellant liable to pay length of service compensation to two employees, June Germain and Susan Gillis, as the appellant failed to provide the affected employees with written notice as required by the *Act*. The appellant says it provided adequate verbal notice, a claim denied by the complainants.

**ISSUE TO BE DECIDED**

The sole issue in this appeal is whether the appellant may be discharged of its statutory liability to pay length of service compensation to the two complainants.

**FACTS**

JFL operated a Husky Gas Station in Langley, B.C. In October of 1995, they notified the local Husky Oil representative of their intention to sell the business. JFL contends employees were verbally notified of its intention to sell the business on or about October 10, 1995. The complainants deny they were verbally notified. For the reasons set out in the analysis of this appeal, it is not necessary to resolve this factual dispute.

By November 10, 1995 a buyer had been found and the business was transferred on or about November 20, 1995. The employment of the complainants was terminated as of the date of the transfer. The termination was without cause and without notice.

**ANALYSIS**

Section 63(1) of the *Act* establishes a statutory liability on an employer to pay an employee length of service compensation upon completion of three consecutive months of employment. It is not only a statutory liability on an employer, but in a sense it is also an “earned” benefit to the employee that accumulates as the length of service of the employee increases. The employer may discharge its statutory liability by giving the appropriate written notice, a combination of notice and money or by the payment of an amount of money equivalent to the appropriate notice.

The relevant portions of the *Act* that establish this statutory liability read:

- 63.(1) After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one weeks’ wages as compensation for length of service.
- (2) The employer’s liability for compensation for length of service increases as follows:
  - (a) after 12 consecutive months of employment, to an amount equal to two weeks’ wages;
  - (b) after 3 consecutive years of employment, to an amount equal to 3 weeks’ wages plus one additional weeks’ wages for each additional year of employment, to a maximum of 8 weeks’ wages.

The statutory provision that identifies how an employer may discharge its liability are specific in requiring that any notice given to an employee of their termination be given in writing. The *Act* says:

- (3)The liability of an employer is deemed to be discharged if the employee
    - (a)is given **written** notice of termination as follows: . . .
- (emphasis added)

There is no discretion in a delegate of the director or in an Adjudicator to ignore clear statutory language such as that found in the portions of Section 63 set out above. There is no ambiguity about how an employer may discharge its statutory obligation to pay an employee length of service compensation in circumstances of discharge without cause. It may only be relieved of its liability upon providing appropriate written notice of termination or combination of written notice and compensation. In this case the employees were given neither written notice of termination of employment nor any combination of notice and compensation. Accordingly, the employer is not relieved of its liability to the employees. It must pay length of service compensation to the complainants.

The appeal is dismissed

**ORDER**

Pursuant to Section 115 of the *Act*, I order that Determination No. 003203 be confirmed.

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**David Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**