

**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 -

Cockney Pride Developments Ltd.  
("Cockney Pride")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Norma Edelman

**FILE NO.:** 1999/311

**DATE OF DECISION:** June 28, 1999

**DECISION**

**OVERVIEW**

This is an appeal by Neall Egan on behalf of Cockney Pride Developments Ltd. ("Cockney Pride") pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination issued by a delegate of the Director of Employment Standards (the "Director") on April 30, 1999. That Determination directed Cockney Pride to pay \$955.68 (including interest accrued) to Clayton Carson for contravention of Section 63 (written notice and length of service pay) of the *Act*.

The appeal application was received May 21, 1999. All parties were afforded an opportunity to respond. No written submissions were put forward by Mr. Carson or the Director.

**ISSUES TO BE DECIDED**

The sole issue to be decided is whether the employer, Cockney Pride, has discharged its liability under Section 63 of the *Act*.

That is, has the employer complied with its notice of termination obligations under the *Act*?

**FACTS**

Cockney Pride employed Mr. Carson from April 26, 1993 to February 27, 1998.

Cockney Pride contends that it provided Mr. Carson with 4 weeks written notice. The notice was typed on the back of Mr. Carson's January pay slip. Cockney Pride argues that it should not have to pay compensation where Mr. Carson cannot find his slip to verify this assertion. Cockney Pride claims it was unable to give Mr. Carson his exact last day of employment until one week before the company closed (on March 1<sup>st</sup>) because it did not know until then when the new owners would be taking over. Furthermore, Cockney Pride argues it offered Mr. Carson a job at the new restaurant, but Mr. Carson refused.

According to the Director's Determination, Mr. Carson took the position that he had not received written notice of the restaurant's closing date. Similarly, the Director's delegate made a finding that written notice was not provided.

**ANALYSIS**

Section 63 of the *Act* provides that an employer becomes liable to pay an employee compensation for length of service upon termination of employment. The liability is "deemed to be discharged" under certain circumstances, including where the employee is given written notice of termination equal to the number of weeks of compensation that would otherwise be owed.

The burden of proof for establishing that written notice was provided rests with the employer (*Re Workgroup Messaging & Communications*, BC EST #D025/96). In the situation at hand, Cockney Pride has provided a copy of a pay slip with the following note typed on the backside:

As you know the restaurant has sold and the new people will be taking over in March sometime, so you will no longer be working here unless the new people take you on. So that gives you about 5 weeks to get your resume out, I will give you any references you need or you can come and work for me in the new place as soon as we get it.

The company provides this slip as proof of written notice to Mr. Carson. The authenticity of the pay slip is questionable as no amounts paid or deducted are indicated, nor does the slip indicate the specific pay period. No documentary evidence is put forward to confirm that Mr. Carson actually received this written notice (e.g. a signature of receipt from Mr. Carson). Even if it is assumed that Mr. Carson received this slip, in my opinion the slip is insufficient notice to discharge Cockney Pride of its statutory obligation to compensate an employee for length of service pursuant to Section 63 of the *Act*.

In order to come within the ambit of Section 63, specific written notice of termination effective as at a particular date must be given. (*Re Sun Wah Supermarket Ltd.*, BC EST #D324/96; *Re Comprehensive Credit Systems (B.C.) Ltd.*, BC EST #D077/96). The typed note on the slip does not provide a specific date. The note is dated January 1, 1998, it states that the restaurant will be taken over in "March sometime" and that Mr. Carson has "about 5 weeks" to get his resume out. Five weeks from January 1, 1998 would fall in February, not March. The letter is ambiguous and lacks a specific date of termination. Moreover, the note more accurately represents the employer's intention to terminate Mr. Carson's employment at a future date rather than an actual termination of employment.

The fact that the employer was not aware of when the new owners were to take over does not discharge Cockney Pride of its statutory obligation. Cockney Pride admits being aware of Mr. Carson's last day of work one week before the restaurant closed. Despite this knowledge, there is no evidence that Cockney Pride took the opportunity to provide Mr. Carson with written notice or a combination of notice and money equivalent to the amount it was liable to pay pursuant to Section 63 of the *Act*.

Finally, Cockney Pride argues that it offered Mr. Carson a job, but he refused. The only evidence submitted relating to this job offer is the pay slip which states Mr. Carson "can come and work for me in the new place as soon as we get it." There is no specific information relating to a start date, location, or rate of pay. In any event, any relationship that may have existed between Mr. Carson and the new company is a completely separate matter from the current claim against Cockney Pride for length of service pay.

Cockney Pride has not met its burden to illustrate that written notice of termination was provided to Mr. Carson. In the absence of such proof, I must conclude that no written notice was provided. Furthermore, the employer did not present any evidence contrary to the Determination with respect to employee wage rates or employment commencement dates. That being the case, I am satisfied that the calculations set forth in the Determination ought to be confirmed.

**ORDER**

Pursuant to section 115 of the *Act*, I order that Determination dated April 30, 1999 be confirmed in the amount of \$955.68 together with any interest that has accrued pursuant to section 88 of the *Act*.

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**Norma Edelman**  
**Adjudicator**  
**Employment Standards Tribunal**