

**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 -

Alice Elaine Devereaux and Denise Lynne Devereaux operating as  
Impromptu Hair Design  
("Impromptu")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 97/291

**DATE OF DECISION:** June 30, 1997

**DECISION**

**OVERVIEW**

This is an appeal by Alice Elaine Devereaux and Denise Lynne Devereaux operating as Impromptu Hair Design (“Impromptu”), under Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination which was issued on April 10, 1997 by a delegate of the Director of Employment Standards (the “Director”). The Determination found that Impromptu owed wages totalling \$247.18 (including interest) to Shannon L. St. Laurent (“St. Laurent”) on account of errors in the payment of commissions and compensation based on length of service.

Impromptu’s appeal is based on the argument that St. Laurent was dismissed because she had a conflict of interest and, therefore, is not owed any compensation based on length of service. Impromptu acknowledges that it made errors in calculating the commissions earned by St. Laurent.

**ISSUE TO BE DECIDED**

Was there just cause to terminate St. Laurent’s employment on August 17, 1996.

**FACTS**

The Determination provides a brief explanation of the findings made by the Director’s delegate following her investigation of St. Laurent’s complaint. In summary, those findings were that St. Laurent is owed wages as follows:

|  |                    |
|--|--------------------|
| Adjustment to August 1996 commissions      | \$ 94.58           |
| Adjustment to September 1996 product sales | \$9.60             |
| 4% vacation pay on adjusted commissions    | <u>\$4.17</u>      |
| Subtotal                                   | \$ 108.35          |
| 2 weeks “severance pay”                    | \$ 666.24          |
| 4% vacation pay on “severance pay”         | \$26.64            |
| Less “severance pay” paid                  | <u>- \$ 562.50</u> |
| <b>TOTAL WAGES OWED</b>                    | <b>\$ 238.73</b>   |

An explanation of these amounts was set out in a separate schedule.

The Director’s delegate concluded that St. Laurent had been paid statutory holiday pay in accordance with the *Act*.

The Determination does not contain an analysis of whether or not there was just cause to terminate St. Laurent's employment. Rather, it deals with the calculation of "termination pay" or "severance pay."

St. Laurent's complaint to the Employment Standards Branch shows that she received "severance pay" but believed it was calculated incorrectly. Similarly, she complained that her "...paystubs never showed how hours and commission were estimated."

Impromptu's appeal alleges that St. Laurent was dismissed "for conflict of interest" and, therefore, is not entitled to "severance pay." Impromptu acknowledges that St. Laurent was paid \$562.50 in "severance pay" and that her commissions were calculated incorrectly in the amount of \$104.18 (i.e. \$94.58 + \$9.60).

Impromptu's appeal also alleges that St. Laurent placed herself in a conflict of interest because:

"...during the week preceding her termination (she) had gathered and solicited client information and advised clients of her planned departure which, it seems, was to be without giving notice."

St. Laurent denies these allegations.

## **ANALYSIS**

Section 63 of the *Act* establishes a statutory liability on an employer to pay compensation based on length of service to an employee upon termination of employment. That statutory liability may be discharged by the employer giving appropriate notice to the employee, by providing a combination of notice and payment in lieu of notice to the employee or by paying the employee wages equivalent to the period of notice to which the employee is entitled under the *Act*.

The employer may be discharged from this statutory liability by the conduct of the employee where the employee terminates the employment, retires or is dismissed for just cause.

As an aside, I note that the terms "severance pay" and "termination pay" are often used to describe the statutory liability which is created under Section 63 of the *Act*. However, I do not think it appropriate for the term "termination pay" to be used in a determination without an explanation of the liability which Section 63 creates for employers.

Impromptu argues, for the first time in this appeal, that it had just cause to terminate St. Laurent's employment because she "...had gathered and solicited client information and advised clients of her planned departure..." In my opinion, an employer does not have just cause to terminate an employee simply because that employee is making arrangements to become employed by another employer. There is no evidence before me which supports the allegation that St. Laurent solicited clients during the week before she was dismissed.

Additionally, I note that St. Laurent was paid, at the time of her dismissal, \$562.50 as “severance pay” (i.e. compensation for length of service as required under Section 63 of the *Act*.) Thus, when she submitted her complaint, the issue was whether she had been paid the correct amount rather than whether she was dismissed for just cause. For that reason, the Determination deals only with the calculation (and adjustment) of wage amounts owing to St. Laurent.

Section 112 of the *Act* establishes a right to appeal a determination. In my opinion, this right of appeal does not create a right to have a complaint investigated for a second time. Rather, there is a right to appeal a determination which was made following an investigation and in which findings of fact have been made. Thus, it is reasonable the person making an appeal should set out clearly why and how the Determination is flawed. Similarly the person making the appeal bears the burden of proving, on the balance of probabilities, that the Determination ought to be varied or cancelled.

For all of these reasons I conclude that there are no grounds on which I should vary or cancel the Determination.

**ORDER**

I order, under Section 115 of the *Act*, that the Determination be confirmed.

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**

GC/da