

**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 -

Rising Star Investments Ltd.

(“RSI”)

- of a Determination issued by -

The Director Of Employment Standards  
(the “Director”)

**ADJUDICATOR:** Barry Goff

**FILE NO.:** 96/414

**DATE OF DECISION:** October 1, 1996

**DECISION**

**OVERVIEW**

This is an appeal by Rising Star Investments Ltd. ("RSI"), operating Subway ("Subway") pursuant to Section 112 of the *Employment Standards Act* (the "Act") against Determination No. CDET 002996 issued by a Delegate of the Director of Employment Standards ("the Director") on June 24, 1996. The determination found that RSI owed Anita Gopal severance pay in the amount \$122.93. RSI disputes the obligation to pay severance pay.

**ISSUE TO BE DECIDED**

Is RSI obligated to pay Gopal severance pay in the amount of \$122.93?

**FACTS**

Anita Gopal was employed by Ocelot Enterprises Ltd. ("Ocelot") operating as Subway. Her employment commenced on September 20, 1995. Gopal was transferred to another Subway location at 810 Burrard Street on February 4, 1996. RSI purchased the 810 Burrard Street location on February 7, 1996. Gopal was terminated by RSI on February 24, 1996. The Record of Employment form shows shortage of work and expected date of recall is listed as unknown. Gopal was not provided with written notice of termination as required by the Act. RSI maintains that she was provided with one week of verbal notice. In its appeal, RSI says the following:

Mrs. Anita Gopal was laid off with one week of verbal notice, I am aware of that. I should have given her written notice, but her employment with Rising Star Investments Ltd. (DBA "Subway") was only 2 weeks.

I agree with and when an employee is working for more than 3 months there should be one week of notice, but Mrs. Gopal was only with us for only two weeks. Mrs. Gopal does not fall under Section 97 because she was transferred to my business on February 4, 1996 and that is clearly not 3 months in fact only 3 weeks. Mrs. Gopal was working for previous owner of Subway who was running 4 Subways at that time and I only bought one location at 810 Burrard and Mrs. Gopal was not even working at that location for 3 months therefore I was not required to give her one week notice. (Although a verbal of one week notice was given to her).

The Act provides under Section 97 as follows:

**Sale of Business or Assets**

If all or part of a business or a substantial part of the entire assets of a business is disposed of, the employment of an employee of the business is deemed, for the purposes of this act, to be continuous and uninterrupted by the disposition.

Gopal was employed with Ocelot in September 1995 and terminated in February of 1996, a period of employment in excess of 3 months.

The Act, quoted in part below, provides under Section 63, liability resulting from length of service.

63 (1) After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week's wages as compensation from length of service.

RSI purchased the Subway location on 810 Burrard, a location formerly owned by Ocelot which had employed Gopal since September 1995. Section 97 above clearly applies to this circumstance. The RSI appeal states that "Gopal does not fall under Section 97 because she was transferred to my business on February 4th". Gopal's transfer to this location does not affect her rights under Section 97. Her employment is considered to be continuous and uninterrupted from September 1995. Put another way, when RSI purchased the business at 810 Burrard, they inherited the obligations of Ocelot to Gopal as an employee, as if she had been employed from September 1995. Gopal is entitled to severance pay.

**ORDER**

I order pursuant to section 115 of the Act that Determination No. CDET 002996 be confirmed.

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**Barry Goff**  
**Adjudicator**  
**Employment Standards Tribunal**

BJG:sc