

**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 -

Vernon Flower Shop Ltd.  
("Vernon Flower Shop")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Cindy J. Lombard

**FILE No.:** 2000/220

**DATE OF HEARING:** June 27, 2000

**DATE OF DECISION:** July 24, 2000

## DECISION

### APPEARANCES

The Appellant/Employer, Vernon Flower Shop Ltd. (“Vernon Flower Shop”) was represented by its general manager, Jakob Spore (“Spore”).

The Respondent/Employee, Wendy White (“White”) appeared on her own behalf. Her fiancée, Andrew Baines, also gave evidence.

The Director did not appear.

### OVERVIEW

This is an appeal by the Employer, Vernon Flower Shop Ltd., pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against a determination of the Director of Employment Standards (the “Director”) issued on March 3, 2000.

White was employed as a salesclerk by Vernon Flower Shop. The Vernon Flower Shop Ltd. has two premises within a few blocks of each other. One premise is known as the Vernon Flower Shop and the other as “Pinkey’s” which both sell flowers as well as other goods. White worked at Pinkey’s and was paid at a rate of \$7.75 per hour.

Spore dismissed White from her employment on March 3, 2000, alleging that she had stolen \$50.00 from the till at Pinkey’s. White adamantly denies that she took any money from the till.

On March 3, 2000, following a complaint by White, the Director of Employment Standards issued a Determination making the following findings and Orders:

1. White was dismissed without cause justifying her dismissal and without notice or compensation or compensation in lieu of notice.
2. The Vernon Flower Shop was ordered to pay to White the sum of \$577.28 being two weeks wages in lieu of compensation for length of service as well as interest pursuant to Section 88 of the *Employment Standards Act* in the amount of \$34.78.

### ISSUE TO BE DECIDED

The issue to be decided is whether the employer had just cause for dismissing White without notice or compensation in lieu of notice on the basis of the allegation of theft.

**FACTS**

On March 3, 2000, a customer by the name of Mrs. Regnier came in to pay her bill for flowers ordered on an earlier date. Flowers are sold at both the Vernon Flower Shop and Pinkey's locations.

Spore alleges on behalf of the Vernon Flower Shop that the payment made by Mrs. Regnier was \$50.00 with her bank debit card and that this amount was not rung into the till but was taken by White. Spore says that the discrepancy showed up when his wife, Mary Spore, did the balancing of the day's receipts and was out approximately \$50.00.

White responds to this allegation as follows:

1. She did not take \$50.00 out of the till.
2. The procedure for payments on accounts, she says, was as follows:
  - a) When someone comes in to pay a flower account, which order may have come from either the Vernon Flower Shop or Pinkey's, the clerk locates the account. In the case of Mrs. Regnier who paid with her bank debit card, the copy of the debit is attached to the account.
  - b) The receipt of the money is not rung into the ROA button on the till. Rather, Mary Spore, Mr. Spore's wife, picks up all of the receipts for the day, takes them to the Vernon Flower Shop premises and rings the receipt into the till at the Vernon Flower Shop.
3. There were several employees who were using the two tills at Pinkey's that day as follows:
  - a) Melinda Spore, the daughter of Jake and Mary Spore
  - b) Lonnie, Jake's son-in-law
  - c) Ozzie, an unofficial employee of Pinkey's (in other words, somebody who voluntarily helps out); and
  - d) Mary Spore

Mary Spore was not present to give evidence to verify just what the situation was that day.

In addition, Andrew Baines, White's fiancée, also gave evidence. Mr. Baines has stated that he would often attend at the store to help White out. He did not, however, ever have access to the till. Mr. Baines stated that there are two tills at the Pinkey's location and that at close-up time, he observed that all the money from both tills is put into one bag at the end of the day. Mr. Baines also observed that all employees used the same two tills, including Ozzie who is not a formal employee.

**ANALYSIS**

Section 63 of the *Act* provides that if an employer dismisses an employee, that the employee must be given a specified amount of written notice of termination, in the case of White at least two week's notice or compensation in lieu of notice, i.e. two week's pay, and that this liability can only be discharged if the employee quits, retires or is dismissed with just cause.

The employer alleges that White was dismissed with just cause, namely her alleged act of theft.

An allegation of theft is a very serious one.

After reviewing the evidence, including the evidence of all the witnesses, ie. Mr. Spore, the Respondent, Wendy White, and her fiancée, Andrew Baines, I have concluded that there is simply no evidence that White stole \$50.00. Therefore, Ms. White was dismissed without cause and is due two weeks of compensation in lieu of notice as determined by the Director of Employment Standards. The onus is on the employer to show that the Director's determination is incorrect. The employer, for the reasons stated herein, has not satisfied that onus.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination with respect with respect to White be confirmed as issued in the amount of \$577.28 together with whatever further interest may have accrued pursuant to Section 88 of the *Act* since the date of issue.

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**Cindy J. Lombard**  
**Adjudicator**  
**Employment Standards Tribunal**