

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act S.B.C. 1996, C. 38*

- by -

SUNSTAR HOLDINGS LTD. operating  
HAVEN FAMILY RESTAURANT  
("Sunstar")

- of a Determination issued by -

The Director Employment Standards  
(the "Director")

**ADJUDICATOR:** Alfred C. Kempf

**FILE NO:** 96/427

**HEARING DATE:** October 28, 1996

**DATE OF DECISION:** October 28, 1996

**DECISION**

**OVERVIEW**

This is an appeal by Sunstar pursuant to Section 112 of the Employment Standards Act (the "Act"), against Determination of the Director of Employment Standards (the "Director") issued on July 10, 1996. In this appeal the employer claims that no wages are owed to Diane Hackman ("Hackman").

A hearing was held in Kelowna, British Columbia, on Monday, October 28, 1996 at 9:00 a.m.. Attending at the hearing was Grant Salekin ("Salekin") on behalf of Sunstar. Hackman did not attend and the Director was not represented at the hearing.

**FACTS**

Salekin testified that in February of 1996, he had become dissatisfied with the performance of Hackman, particularly in respect to the taking of breaks, tardiness and absenteeism. He met with her on February 9, 1996 approximately in the middle of her shift. He raised his concerns about her performance in the areas referred to above. She responded "I can't handle this any more", gathered her possessions and left the restaurant operated by Sunstar in the middle of her shift. She gave no indication as to when she would be returning to work. She failed to return for scheduled shifts on the 10th, 11th and 12th of February. She did not communicate with Sunstar in advance indicating that she had any valid reason for not attending work. Hackman telephoned Salekin on February 12th indicating that she had obtained another job and would not be returning to the employ of Sunstar. Approximately one week later Sunstar prepared a Record of Employment indicating that Hackman had resigned her employment. There is no evidence that Hackman was terminated from her employment, in fact, all evidence points to the fact that she voluntarily gave up her employment.

**ISSUE TO BE DECIDED**

Was Hackman wrongfully dismissed from her employment with Sunstar so as to entitle her to severance pay pursuant to Section 42 of the Act.

**ANALYSIS**

It is noted that the Determination refers to the fact that the employer produced no documents or witnesses to establish just cause, progressive discipline or self termination. There would be no onus on the employer to provide such evidence where the conduct of the employee amounted to a abandonment of her employment.

I am satisfied that the employer has satisfied the onus of establishing that it is more likely than not that Hackman abandoned her employment. There is no evidence that she was constructively dismissed (i.e. forced to resign). In the circumstances there is no termination and no entitlement on the part of Hackman to severance pay.

**ORDER**

In summary, I order under Section 115 of the Act, that the Determination #003189 be cancelled.

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**Alfred C. Kempf**  
**Adjudicator**  
**Employment Standards Tribunal**

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