

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 -

Interior Restaurant Management Inc.
operating as J.D.'s Restaurant
("Interior")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE No.: 2000/403

DATE OF DECISION: August 24, 2000

DECISION

OVERVIEW

This appeal is pursuant to section 112 of the *Employment Standards Act* (the “Act”) and by Interior Restaurant Management Inc. operating as J.D.’s Restaurant (“Interior”, also, “the employer”). Interior appeals a Determination by a delegate of the Director of Employment Standards (the “Director”) dated May 18, 2000. The Determination orders Interior to pay Debra Boyes compensation for length of service plus interest and vacation pay.

The delegate has found that Interior must pay length of service compensation in that it failed to give Boyes any notice of termination. Interior, on appeal, claims that it did give Boyes notice of termination.

ISSUES TO BE DECIDED

The matter of whether the employer did or did not give written notice of termination is at issue. What I must ultimately decide is whether the employer has or has shown that the Determination ought to be varied or cancelled for reason of an error or errors in fact or law.

FACTS

Debra Boyes worked for Interior Restaurant Management at J.D.’s Restaurant. The employment was for 14 years. On January 31, 2000, Donald Huot, the restaurant’s owner, told Boyes that he was going to close the restaurant and terminate her. Boyes was at that time given a letter dated January 31, 2000. The letter is as follows:

“Please accept this letter as your notice of termination of employment, effective immediately.

I would like to thank you for you continued loyalty. It has been a pleasure working with you and I wish you much success in the future.”

Boyes was not terminated on the 31st. She just continued on working. Then, on the March 26, 2000, Huot telephoned Boyes and told her that there was no further work for her and that he was closing the restaurant for good.

ANALYSIS

It is section 63 of the *Act* which imposes the liability to pay compensation for length of service on employers. Subsection 63 (3) of the *Act* establishes that the liability is discharged in certain circumstances.

63 (3) *The liability is deemed to be discharged if the employee*

(a) *is given written notice of termination as follows:*

(i) *one week's notice after 3 consecutive months of employment;*

(ii) *2 weeks' notice after 12 consecutive months of employment;*

(iii) *3 weeks' notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 weeks' notice;*

(b) *is given a combination of notice and money equivalent to the amount the employer is liable to pay, or*

(c) *terminates the employment, retires from employment, or is dismissed for just cause. (my emphasis)*

Boyes was given written notice of termination of a sort. The delegate's reading of the employer's notice is that it provided for immediate termination. He has found that the "January 31, 2000 letter does not contain any wording that could be mistaken as notice of termination sometime in the future, only termination on January 31, 2000". I find that it is somewhat more ambiguous than that.

What Interior claims, on appeal, is that it was made perfectly clear to Boyes on the 31st that she was not being terminated that very day but only being notified, through the letter dated January 31, 2000, that she faced termination, in other words, what was effective immediately was the notice, not the termination. And the employer's letter may be read that way. But I find that, if it was not the termination but the notice that was to be effective immediately, it then follows that the letter says nothing at all about when the termination was to occur, and that it is not then notice of termination because of that. Notice of termination must include a clear written statement of when the termination is to be.

Boyes was terminated on the 26th of March without being first told, through written notice, that she was going to be terminated on that day. All Interior did was warn her to expect termination. The letter dated January 31, 2000, left the date of termination open. It did not advise Boyes that she was going to be terminated in 8 weeks or on the 26th of March.

I find that no amount of Interior's liability to pay Boyes compensation for length of service has been discharged. Boyes is entitled to 8 weeks' compensation for length of service with vacation pay and interest being over and above that. As that is what the Determination awards, I am confirming the decision.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination dated May 18, 2000, be confirmed in the amount of \$1,991.99 and to that I add whatever further interest has accrued pursuant to section 88 of the *Act*.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal