

**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 -

Camilla Elizabeth Rivest  
("Rivest")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Carol Roberts

**FILE NO.:** 96/559

**DATE OF HEARING:** December 2, 1996

**DATE OF DECISION:** December 2, 1996

## DECISION

### APPEARANCES

For the Appellant: Camilla Rivest  
For the Director: No one appeared  
For Haultain Fish and Chips: Erin Faulkner, Pearlman & Lindholm  
Mary Schmidt

### OVERVIEW

This is an appeal by Rivest, pursuant to Section 112 of the *Employment Standards Act* ("the *Act*"), against a Determination of the Director of Employment Standards ("the Director") issued on September 3, 1996, which found that the Employer, Haultain Fish and Chips, ("Haultain") had violated sub Sections 34(2), 40(1) and (2), 45 and 46(1) of the *Act*, and ordered payment of \$546.50 to the Director of Employment Standards.

The Director further determined that the Employer had not violated Section 63(2) of the *Act*.

### ISSUE TO BE DECIDED

Whether the Employee was dismissed without just cause and is entitled to payment in lieu of notice.

Rivard began work as a waitress with Haultain on or about June 1992. On or about February 19, 1996, Rivest took a leave from work due to a death in the family. The employer provided that leave and advised Rivest she could return in March, following the closing of the restaurant for the employer's vacation. On February 20, Rivest requested, and received, her outstanding vacation pay.

In early March 1996, Rivest's mother became ill, and Rivest was required to stay home to care for her. On March 17, 1996, Rivest requested, and received, her Record of Employment (ROE). Rivest filed a complaint with the Director, claiming that she had been fired from her position.

Following an investigation, the Director determined, on a balance of probabilities, that Rivest abandoned her position with the company, and found no money owing.

### ANALYSIS

Rivest claims that her mother's illness required that she stay home and care for her, and that she received a letter from her doctor regarding this. In addition, she claims she was depressed as a result of her father's death and her mother's illness.

After speaking to her MLA's office, Rivest sought her ROE, as it was a pre-requisite to obtaining temporary medical benefits under the Unemployment Insurance Act. Rivest claims that it was always her intention to return to work at Haultain once her mother's condition had improved, and that she did not abandon her position. She claims she was terminated without cause, and is entitled to compensation on termination of employment.

Following the Director's investigation of Rivest's complaint that she was entitled to compensation, he concluded, on a balance of probabilities, that Rivest had abandoned her position.

The burden of establishing that the Director's Determination is incorrect rests with the Appellant. There was no evidence presented in the hearing to convince me that the Director's determination was incorrect. In fact, evidence was presented at the hearing which supports the Director's conclusion. Rivest had previously been given a one year leave of absence by Haultain due to family circumstances. She was rehired after that leave. The evidence of Ms. Schmidt, which was not contested by Rivest, was that Haultain was ready, willing (with mediation) and able to rehire Rivest following an intervention on her behalf by the M.L.A. That offer was not accepted. On a balance of probabilities, I am unable to conclude, based on Haultain's treatment of Rivest in the past, that Rivest was terminated for taking a leave.

Consequently, I am unable to find that the appeal has been substantiated.

**ORDER**

I Order, pursuant to Section 115 of the *Act*, Determination No. CDET003839 be confirmed.

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**Carol Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**