

**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-

Million Fancy Investments Co. Ltd. operating as Pearl City Family Restaurant.  
(" Pearl City ")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	C. L. Roberts
<b>FILE NO.:</b>	97/329
<b>DATE OF HEARING:</b>	July 30, 1997
<b>DATE OF DECISION:</b>	July 30, 1997

**DECISION**

**APPEARANCES**

Jamie Ma & Jane Ma                      For Pearl City  
A. Williams                                      On her own behalf

**OVERVIEW**

This is an appeal by Million Fancy Investments Co. Ltd. operating as Pearl City Family Restaurant ("Pearl City") , pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination of the Director of Employment Standards (the "Director") issued April 7, 1997 . The Director found that Pearl City contravened Section 63 of the *Act* in terminating Alisa Williams' ("Williams") employment without cause or compensation in lieu of notice.

Pearl City claims that the Director failed to properly consider the circumstances of Williams leaving her employment, and that it should be found that she abandoned her position.

**ISSUE TO BE DECIDED**

Whether the Director correctly determined that Williams was terminated from her employment without cause.

**FACTS**

Williams reported for work on November 20, 1996, as she normally did. She stated that there were no customers in the restaurant, and most of the tables had not been cleared. It is expected that waitresses clear the tables before leaving their shift, but if the customers have not left, the tips are shared by the new waitress. She claims that non-owner waitresses always cleaned up after themselves and ensured the materials were restocked. Williams cleared the tables, while complaining about the condition of the restaurant. Williams claims that the owner, Mrs. Ma, stated that she had been too busy to clean up. They argued, and continued arguing until some customers entered. She alleges that Ma then went into the kitchen, and it was her impression that she began complaining about her. Williams became upset and went home.

Williams indicated this was the only time in the two years she had been working for Pearl City this had happened. She reported for work the following day and was told she had been fired.

The Director found that Williams was terminated from her employment as a result of an incident at the restaurant on November 20, 1996. The evidence about that incident is conflicting, but the Director preferred that of Williams, and noted that, although the behaviour was inappropriate, disciplinary measures rather than dismissal was called for.

At the appeal hearing, Mr. Ma contended that Williams abandoned her position when she left the restaurant, and that Williams should have called the following day to find out whether she was still an employee before showing up for work. Mr. Ma also indicated that he had no intention of recalling Williams back to work.

At the hearing, Williams restated her evidence that she was advised that she was fired when she reported for work the following day. There was no further evidence either in support of or contradicting the Director's findings of fact.

## ANALYSIS

On the evidence presented, I am unable to find that the Determination is incorrect.

Williams worked for Pearl City for two consecutive years, with the exception of a six month period when she was off with a leg injury. The Mas agreed that there had been no previous written warnings about Williams' conduct prior to this incident. There was no evidence contradicting the Director's finding that Williams was trusted enough to close the restaurant on her own on numerous occasions. Even though the facts surrounding the incident on the evening of November 20 are conflicting, the fact is that Mrs. Ma and Williams had a dispute, following which Williams left the restaurant. On the evidence, I am not persuaded that the Director's conclusion that Williams' behaviour, while inappropriate, called for disciplinary action rather than dismissal, is in error. There was no evidence presented to suggest that corrective discipline was considered. I am also unable to find that this incident caused a fundamental breach of the employer employee relationship which would justify immediate dismissal.

Mr. Ma contended that the law unfairly favored employees over employers, and that Williams' behaviour caused him financial hardship. While I may sympathize with financial difficulties small businesses may find themselves in, my jurisdiction is limited to a fair application of the *Employment Standards Act*. As I explained to Mr. Ma at the hearing, once an individual is hired to perform a service for that business, the *Act* sets down rules which govern the relationship between those parties. In this instance, the law protects employees from wrongful termination. As there was no evidence supporting the claim that the employee abandoned her job, the appeal is denied.

## ORDER

I Order, pursuant to Section 115 of the Act, that the Determination be confirmed.



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