

**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 -

K.C. Projects Ltd. Operating as Buns Master Bakery  
("KCP")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** David Stevenson

**FILE NO.:** 96/582

**DATE OF DECISION:** December 6, 1996

## **DECISION**

### **OVERVIEW**

This is an appeal by K.C. Projects Ltd. operating as Buns Master Bakery (“KCP”) from a Determination of a delegate of the Director of the Employment Standards Branch (the “director”), Number CDET 004026, dated September 17, 1996. The director found KCP liable for length of service compensation to a former employee, Cheryl Funnelle (“Funnelle”) in the amount of \$322.91. KCP says the Determination is wrong as KCP believed Funnelle, who had given two weeks notice of an intention to terminate her employment, wished to leave immediately and was only accommodating that wish.

### **ISSUE TO BE DECIDED**

The sole issue to be decided is whether KCP, in all the circumstances, is required to pay Funnelle length of service compensation.

### **FACTS**

Funnelle was employed by KCP in October, 1994. She was employed as a bread slicer/cashier. In March, 1996 Funnelle found another job and decide to quit KCP. Her new job was scheduled to start April 1, 1996. On March 11, 1996 she verbally provided KCP with 2 weeks’ notice of an intention to leave their employ. She told KCP she was going to work somewhere else.

In the evening of March 11, 1996, Mr. Harry Ibawu, the owner of KCP, called Funnelle and advised her she no longer needed to report for work, as they had found a replacement for her. KCP says they had the impression Funnelle wanted to leave immediately and that is the reason they terminated her employment rather than allow her to work out the notice period.

### **ANALYSIS**

The right to quit is personal to the employee. That right is exercised when an employee demonstrates an intention to quit and an act inconsistent with further employment. Just as the right to quit is personal to the employee, so is the timing of the exercise of that right. An employer has no right or power to dictate the timing of a quit. In this case, Funnelle advised the employer she would be quitting her employment in two weeks. Stated in another way, Funnelle had no intention of quitting her employment immediately. KCP decided to terminate her employment two weeks earlier than she intended.

Section 63 of the *Act* establishes a statutory obligation on an employer to pay length of service compensation to any employee who completes three consecutive months of employment, the amount of compensation increases as the employee's length of service increases to a maximum of 8 weeks. That statutory obligation is discharged only if the employer gives written notice equivalent to the entitlement of the employee, provides a combination of written notice and compensation equivalent to the entitlement of the employee or the employee quits, retires or gives just cause for dismissal to the employer.

There is no basis on which KCP can claim it was discharged from its obligation to compensate Funnelle for her length of service. No written notice of termination equivalent to her entitlement had been given by KCP, no compensation had been given and as of the date of termination, March 11, 1996, Funnelle had not quit, retired or given cause for dismissal. In the absence of any basis to discharge KCP from the obligation to pay length of service compensation, KCP is obligated to pay Funnelle the equivalent of 2 weeks' wages.

The appeal is dismissed.

**ORDER**

I order, pursuant to Section 115 of the *Act*, Determination Number CDET 004026, dated September 17, 1996, be confirmed.

.....  
**David Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**