

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 -

Anglican Church Women of the Diocese of British Columbia
Operating Caroline Macklem House

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: John M. Orr

FILE No: 1999/428

DATE OF DECISION: August 26, 1999

DECISION

OVERVIEW

This is an appeal by the Anglican Church Women of the Diocese of British Columbia operating Caroline Macklem House ("Macklem House") pursuant to Section 112 of the Employment Standards Act (the "Act") from a Determination (File No. 011195), dated June 16, 1999 by the Director of Employment Standards (the "Director").

In the determination the Director's Delegate found that Macklem House owed compensation for length of service to an employee, Mary Anne Robinson ("Robinson") in the amount of 3 weeks wages which together with interest to the date of the determination amounted to \$1,416.12.

Macklem House has appealed on the grounds that they had given written notice in excess of the minimum provided in the act and that therefore compensation for length of service was discharged.

ISSUE TO BE DECIDED

The issue to be decided in this case is whether the notice given by Macklem House was adequate and whether it complied with the legislation.

FACTS AND ANALYSIS

Section 63 of the *Act* provides that an employee is entitled to compensation based on the length of service with the employer. In Robinson's case this amounted to 5 weeks. The liability of the employer to pay such compensation is deemed to be discharged if the employee is given the equivalent amount of *written* notice (emphasis added). Macklem House gave a general notice to all its employees in the following terms:

*To All Staff Members
Caroline Macklem Home*

October 1, 1998

The Anglican Church Women of the Diocese of British Columbia, owner/operators of the Caroline Macklem Home regretfully announce their decision to close the Home.

The target date for closure of the Caroline Macklem Home will be January 31, 1999, allowing time for all residents to be relocated. Should this occur by an earlier date, then that will be when our licence is surrendered.

Unfortunately it will become necessary to lay off some members of the present staff, as the number of residents decrease. The standard notice of two weeks (being the regular pay period) will be given, so that any staff member affected will be able to make further plans.

It is clear from the reading of this letter that it was a general statement of intent to give future notice once the final date of operation was ascertained. It was not a specific notice of termination to any one individual. The letter states that once it is decided to lay-off (sic) any individual then that person would receive two weeks notice.

This is exactly what happened to Ms Robinson. On November 25, 1998 she was given specific notice of lay-off (sic) with the last day of work being December 9, 1998. This was two weeks notice of termination.

Macklem House alleges that the letter of October 1, 1999 was intended to give a minimum of 8 weeks notice to any employees and in fact Ms Robinson had notice from that date. I can not agree with this proposition as the letter of October 1, 1999 contemplates that employees could expect to work until at least January 31, 1999 unless given specific notice otherwise. Ms Robinson, because of her length of service, was entitled to at least 5 weeks of such specific notice not just the two weeks given.

Macklem House also refers to some publication upon which they relied in interpreting the legislation but it is the duty of this Tribunal to interpret and apply the legislation and not any explanatory publications. The *Act* is quite clear about the length of notice required and as noted above I can not find that the letter of October 1, 1999 constituted such notice.

I conclude that the determination is correct and it is confirmed.

ORDER

I order, under Section 115 of the *Act*, that the Determination is confirmed.

John M. Orr
Adjudicator
Employment Standards Tribunal