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 -

Capitol Hill Day Care Centre Society operating as Capital Hill Daycare Centre ("Capitol Hill" or the "Employer")

- of a Determination issued by -

The Director Of Employment Standards (the "Director")

ADJUDICATOR: Ib S. Petersen

FILE NO.: 98/462

DECISION DATE: October 16, 1998

DECISION

APPEARANCES/SUBMISSIONS

Ms. Helen Chong

on behalf of the Employer

OVERVIEW

This is an appeal by the Employer pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination of the Director of Employment Standards (the "Director") issued on July 9, 1998 which found that Ms. Maureen Teahan had been terminated and, in the result, was entitled to compensation for length of service, for a total of \$485.48.

ANALYSIS

The issue to be decided in this appeal is whether the Employer offered to return Teahan to employment after a temporary lay-off.

Teahan was employed by the Employer as an early childhood educator between September 5, 1994 and December 31, 1997, the date of her lay-off. The Employer gave notice of the temporary lay-off on December 18, 1997. Reduced to its very basic elements, the Employer says that it offered Teahan a return to work during a telephone conversation on February 16, 1998. Teahan denies this. The Employer produced notes of that conversation to the delegate and explained that, while it hired someone to replace Teahan, it would have preferred to keep her. The Employer has the burden to prove the Determination wrong. The Employer stated in its written appeal that it wanted the appeal decided on the basis of written submissions as it was unable to attend a hearing. The issues in dispute relate largely to factual allegations and credibility and can only be decided on the basis of a hearing. In the result, I dismiss the appeal.

ORDER

Pursuant to Section 115 of the Act, I order that Determination in this matter, dated July 9, 1998 be confirmed.

Ib Skov Petersen Adjudicator Employment Standards Tribunal