

An appeal

- by -

348882 BC Ltd. operating 99-Mile Motel
(the "Employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: Wayne R. Carkner

FILE No.: 2001/178

DATE OF HEARING: July 16, 2001

DATE OF DECISION: July 19, 2001

DECISION

APPEARANCES:

For the Appellant	Ernest Maksymetz (Maksymetz) Crystal Turnball - Witness
For the Respondents	Kathleen Ehmann (Ehmann) Sharon Deane (Deane) Gary Deane
For the Director	No Appearance

OVERVIEW

This is an appeal by 348882 BC Ltd., operating 99-Mile Motel, pursuant to Section 112 of the *Employment Standards Act* (the *Act*) of a Determination issued by the Director of Employment Standards (the “Director”) on February 7, 2001. The Determination concluded that Ehmann and Deane had not been terminated for just cause and that pursuant to Section 63 of the *Act* were entitled to compensation for length of service. The Delegate of the Director determined that Ehmann was entitled to a remedy of \$706.99 and that Deane was entitled to a remedy of \$530.43 inclusive of interest owing. This appeal was scheduled for an oral hearing on July 16, 2001.

ISSUES

Were Deane and Ehmann terminated for cause and excluded from entitlement to compensation for length of service pursuant to Section 63 of the *Act*.

PRELIMINARY ISSUES

1. Was this an appropriate case to allow new evidence to be presented?
2. Was this an appropriate case to grant an application for adjournment?

FACTS & ANALYSIS

At the commencement of the hearing Maksymetz, the Manager of the 99-Mile Motel, called Crystal Turnball as a witness. The Respondents objected to Ms Turnball being called as she had no knowledge of the circumstances leading up to their termination of employment by

Maksymetz. Maksymetz stated that his wife was unable to attend and that Ms Turnball could testify to the policies that were in place when she worked for the 99-Mile Motel. In the Appellant's submission the policy issue was the main reason the Employer terminated the employment of the Respondents. Ms. Turnball had previously been employed by the 99-Mile Motel in the same position as the Respondents, however, had not been employed for approximately one year prior to the termination of the Respondents. Based on these facts I determined that Ms Turnball's evidence would be of little help to the Tribunal due to the fact that the evidence to be presented occurred one year before the incident and would not have any substantive relevance to the issues before me as well as being new evidence which, without any compelling reasons, was not presented to the Delegate when the investigation was being conducted.

When the evidence of Ms Turnball was disallowed Maksymetz applied to adjourn the hearing to a later date when his wife would be available to be called as a witness. Both Respondents objected to an adjournment at this late juncture in the process as one of the Respondents had to travel to the hearing from McCleese Lake and the issue had been dragging on for a long period of time. Maksymetz stated that his wife was working in Sorrento, just east of Kamloops, and that she could not afford to take time of work to attend the hearing. Maksymetz was aware two weeks prior to the hearing that his wife would not be attending the hearing. When he was quizzed on why he did not apply for an adjournment at that time he stated that he thought he could apply for the adjournment, if required, at the scheduled hearing. As Maksymetz did not offer any compelling reason(s) why an adjournment should be granted the application was denied.

Maksymetz then stated he would be leaving the hearing, as he was not prepared to continue at this time. I encouraged Maksymetz to enter the rest of his case as the burden of proof was on the Appellant to show an error(s) in the Determination. Maksymetz stated that he was not prepared to continue until an adjournment was granted to a date his wife could attend. I cautioned Maksymetz that if he left the hearing without presenting his case I would have no alternative but to declare that the Appellant had abandoned the appeal and I would have to confirm the Determination. Maksymetz acknowledged that he understood the ramifications of leaving however he would deal with that issue upon reconsideration. I cautioned Maksymetz that reconsiderations were heard in the narrowest of circumstances and that he would have a long hill to climb to establish grounds for a reconsideration. Maksymetz stated that he understood that however he was not prepared to continue. The hearing was then concluded.

I conclude that the Appellant has abandoned the appeal.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated February 7, 2001 is confirmed together with any interest that has accrued pursuant to Section 88 of the *Act*. Such interest is to be calculated by the Delegate.

Wayne R. Carkner
Adjudicator
Employment Standards Tribunal