

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 -

KLAS Consulting & Investment Ltd. operating as
Tim's Bakery & Tea Room
("Tim's")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 97/481

DATE OF HEARING: August 28, 1997

DATE OF DECISION: September 5, 1997

DECISION

APPEARANCES

Winnie Lam	on behalf of KLAS Consulting & Investment Ltd. operating as Tim's Bakery & Tea Room
Tina M. Brown	on her own behalf
Alan Brown	an observer
M. Elaine Bellamore	on behalf of the Director of Employment Standards

OVERVIEW

This is an appeal by KLAS Consulting & Investment Ltd. operating as Tim's Bakery & Tea Room ("Tim's") under Section 112 of the *Employment Standards Act* (the "Act"), against a Determination dated May 29, 1997 issued by a delegate of the Director of Employment Standards (the "Director"). The delegate of the Director determined that Tim's was liable for payment of compensation for length of service to Tina M. Brown ("Brown") in the amount of \$ 148.10. Tim's alleges that the delegate of the Director erred in the Determination as Brown had quit her employment and was not entitled to compensation for length of service.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Tim's owes compensation for length of service to Brown ?

FACTS

The following facts are not in dispute:

- the amount of the compensation would be \$148.10;
- Brown was employed as a server from March 11 to November 1, 1996;
- Brown provided 2 weeks verbal notice of resignation to Tim's on November 1, 1996;
- Brown did not perform work for Tim's after November 1, 1996.

Tim's states that:

- Brown was given the option of working out the 2 week notice period or leaving immediately and chose to leave immediately;
- Brown's employment was not terminated.

Brown states that:

- shortly after giving verbal notice to Tim's, Winnie Lam ("Lam") returned and advised Brown that Lam and her husband had decided that Brown was not to return to work the next day;
- she returned work shirts on the following Monday and received her final wages and vacation pay cheque. .

The Director states:

- although Tim's had alleged during the investigation that Brown had behavioural problems in the workplace, no evidence was provided;
- Tim's did not have just cause for termination of Brown's employment;
- there is no doubt that Brown provided notice of resignation.

ANALYSIS

The liability of an employer for compensation for length of service is set forth in Section 63 of the *Act* which provides:

Section 63, Liability resulting from length of service

(1) After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week's wages as compensation for length of service.

(2) The employer's liability for compensation for length of service increases as follows:

- (a) after 12 consecutive months of employment, to an amount equal to 2 weeks' wages;*
- (b) after 3 consecutive years of employment, to an amount equal to 3 weeks' wages plus one additional week's wages for each additional year of employment, to a maximum of 8 weeks' wages.*

- (3) *The liability is deemed to be discharged if the employee*
- (a) *is given written notice of termination as follows:*
 - (i) *one week's notice after 3 consecutive months of employment;*
 - (ii) *2 weeks' notice after 12 consecutive months of employment;*
 - (iii) *3 weeks' notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 weeks' notice;*
 - (b) *is given a combination of notice and money equivalent to the amount the employer is liable to pay, or*
 - (c) ***terminates the employment, retires from employment, or is dismissed for just cause.***
- (4) *The amount the employer is liable to pay becomes payable on termination of the employment and is calculated by*
- (a) *totalling all the employee's weekly wages, at the regular wage, during the last 8 weeks in which the employee worked normal or average hours of work,*
 - (b) *dividing the total by 8, and*
 - (c) *multiplying the result by the number of weeks' wages the employer is liable to pay.*
- (5) *For the purpose of determining the termination date, the employment of an employee who is laid off for more than a temporary layoff is deemed to have been terminated at the beginning of the layoff.*

(emphasis added)

The liability of Tim's to pay compensation for length of service is deemed to have been discharged if the circumstances outlined in Section 63(3) as set forth above have been met. The burden of establishing that Brown quit her employment and is not entitled to compensation for length of service rests with Tim's. Tim's has not provided evidence to establish that after accepting 2 weeks notice of resignation from Brown, Brown then agreed to leave immediately.

I conclude that Tim's is liable for the payment of compensation for length of service in the amount of \$148.10 to Brown.

For all of the above reasons, the appeal by Tim's is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated May 29, 1997 be confirmed in the amount of \$148.10.

Hans Suhr
Adjudicator
Employment Standards Tribunal

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