

An appeal

- by -

Gar-Don Enterprises Ltd. operating as White Spot

- 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: John M. Orr

FILE No.: 2002/298

DATE OF HEARING: August 28, 2002

DATE OF DECISION: September 9, 2002



DECISION

APPEARANCES:

Claudio DiPiero

On his own behalf

No One appeared on behalf of Gar-Don Enterprises Ltd.

OVERVIEW

This is an appeal by Gar-Don Enterprises Ltd ("Gar-Don") pursuant to section 112 of the *Employment Standards Act* ("the *Act*") from a determination dated May 6, 2002 by the Director of Employment Standards ("the Director").

Gar-Don operated a White Spot restaurant and employed Claudio DiPiero ("DiPiero") as a general manager. The employment was terminated on May 14 2001. A dispute arose as to whether DiPiero quit his employment or whether he was summarily dismissed. No cause was alleged.

The Director determined that DiPiero was summarily dismissed and that he was entitled to compensation for length of service. Gar-Don appealed and provided fairly extensive written submissions. However, no one appeared at the scheduled hearing on behalf of Gar-Don and the appeal is dismissed.

ISSUES

The issue in this case is whether the employee terminated the employment or whether the employee was summarily dismissed and therefore entitled to compensation for length of service.

FACTS AND ANALYSIS

Gar-Don operated a White Spot Restaurant and employed DiPiero as the general manager. On May 14th, 2001 there was a meeting between the President of Gar-Don and Mr. DiPiero. There were no witnesses at the meeting. At the conclusion of that meeting DiPiero's employment was terminated. The issue arose as to whether DiPiero quit his job or whether he was fired.

The Director interviewed several witnesses and the two principals and concluded on a balance of probabilities that DiPiero was dismissed and that he was entitled to compensation for length of service. Gar-Don has submitted fairly extensive written submissions alleging that the Director's delegate inaccurately assessed the matter and the credibility of DiPiero. Gar-Don alleged that DiPiero had strong motives to quit his employment and that this was not accurately considered by the Director's delegate.

The onus on an appeal is on the appellant to satisfy the Tribunal that the Director's determination is wrong. I am not satisfied that the appellant has met that onus in this case.

This matter was scheduled for an oral hearing and no one appeared on behalf of the corporation. As the substance of this dispute depends to a very large extent on an assessment of the evidence and the credibility of the principals I am in no better position to make that assessment than was the Director's



delegate. In fact, I would be at a disadvantage in that I have not had an opportunity to hear directly from anyone on behalf of Gar-Don.

The onus is on the appellant to persuade me that the determination is wrong and in the absence of a representative from the corporation I am not satisfied that the appellant has met that onus. Therefore the appeal is dismissed and the determination confirmed.

ORDER

Pursuant to section 115 of the Act I order that the determination date May 6, 2002 is confirmed.

John M. Orr Adjudicator Employment Standards Tribunal