

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-

McCulloch Orchard Greens Inc. Operating as the Bunkhouse Bar & Grill
(the “Appellant”)

-of a Determination issued by-

The Director of Employment Standards
(the “Director”)

ADJUDICATOR: E. Casey McCabe

FILE NO.: 97/187

DATE OF DECISION: September 17 1997

DECISION

APPEARANCES

Gay C. Moe	for the employer
Stacy Beek	for himself
Graham Jickling	for the Director of Employment Standards

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) from a Determination dated March 10, 1997. The employer appeals an award of \$105.07 made in favor of Mr. Beek for compensation for length of service pursuant to Section 63 of the *Act*.

ISSUE TO BE DECIDED

1. Is Mr. Beek entitled to compensation for length of service or was he dismissed for just cause?
2. Is the employer entitled to lead evidence on appeal of its reasons for terminating the complainant when it failed to respond to demands for information made by the Director’s Delegate during the investigation of the complaint?

FACTS

Mr. Beek worked as kitchen help in the Bunkhouse Restaurant which is part of the McCulloch Orchard Greens Golf Club located at Kelowna, British Columbia. Mr. Beek was employed from July 4, 1995 to November 29, 1995. At the time of his termination Mr. Beek was paid outstanding wages and vacation pay but was not paid compensation for length of service. Mr. Beek filed his complaint on January 15, 1996 and the Determination was issued on March 10, 1997.

The length of time is significant because during that period the industrial relations officer was attempting to elicit a response from the employer regarding Mr. Beek’s complainant. The Director’s delegate indicates that he made telephone calls and left messages with the employer concerning the matter and that he sent letters dated October 9, 1996 and February 24, 1997. The employer did not respond to those letters or the calls. However by letter dated March 20, 1997 some 10 days after the Determination was issued, the employer responded in writing. In that

letter the employer alleges that it had just cause for dismissing Mr. Beek and encloses schedules coupled with time sheets to show occasions of tardiness and failure to report for a shift. The employer also encloses a letter from the Head Chef explaining that she dismissed Mr. Beek after repeated warnings that his tardiness was putting his job in jeopardy and a letter from another Chef corroborating that Mr. Beek had been given warnings in regard to his tardiness. Not surprisingly Mr. Beek challenges the credibility of those allegations.

ANALYSIS

It is not necessary to make findings of credibility in this matter. I find that the employer was given ample opportunity during the investigative stage to raise a defense to Mr. Beek's claim. The employer offers in its letter of March 20, 1997 that it is sorry but through a combination of errors the matter was overlooked and now requires the director's attention for correction. The Tribunal has consistently followed the policy of refusing to allow appellants to introduce evidence on appeal that was available but not produced during the investigative stage. The Tribunal will not allow parties to "sit in the weeds" and offer at the appeal stage evidence that should have been considered during the investigation of the complaint. (see *Tri-West Tractor Ltd.* BCEST # D268/96; *Kaiser Stables Ltd.* BC EST #D058/97) I do not see any reasons in the appellant's submission that gives me a basis to deviate from the Tribunal's policy in these situations.

ORDER

I order that the Determination dated March 10, 1997 be confirmed.

E. Casey McCabe
Adjudicator
Employment Standards Tribunal