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 -

United Furniture Warehouse Ltd.
(" United ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: David B. Stevenson

FILE No.: 2000/404

DATE OF DECISION: October 12, 2000

DECISION

APPEARANCES:

on behalf of United	Laura Bruvold
on behalf of the individual	in person

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the "*Act*") by United Furniture Warehouse Ltd ("United") of a Determination which was issued on May 19, 2000 by a delegate of the Director of Employment Standards (the "Director"). The Determination concluded that United had contravened subsection 54(2) and Section 63 of the *Act* in respect of the employment of Katie Walker ("Walker"), and ordered United to cease contravening and to comply with the *Act* and to pay an amount of $5896.77.

Subsection 54(2) of the *Act* reads:

> *54. (2) An employer must not, because of an employee's pregnancy or a leave allowed by this Part,*
>
> *(a) terminate employment, or*
>
> *(b) change a condition of employment without the employee's written consent.*

Under subsection 126(4) of the *Act*, the burden is placed on the employer to prove that an employee's pregnancy is not the reason for terminating the employment.

In its appeal, United argued that Walker was not terminated because of her pregnancy and had, in fact, been dismissed for just cause and asked that the Determination be cancelled.

ISSUE

The issue raised in this appeal is whether United has shown the Determination was wrong in its conclusion that United had not shown there was just cause to dismiss Walker and had not met the burden of showing that Walker's pregnancy was not the reason for terminating her employment.

THE FACTS AND ANALYSIS

The Determination notes the following findings of fact:

> Ms. Walker was employed from November 24, 1998 to June 23, 1999. Ms. Walker was pregnant and was terminated on June 23, 1999.
>
> The employer has provided 2, (December 1998 and February 1999) monthly evaluation reports. The employer has further supplied a "mystery shopper" report, two notes regarding illness and the notice of termination issued June 22nd.
>
> Ms. Walker locked and closed the store on June 21st to do a personal errand.

The Determination also included a review of two matters that were central to the Determination - allegations that the Manager of the store in which she worked, Joe Storms ("Storms"), told Walker that if she could not do her job because of her pregnancy she would be fired and that Storms, in a telephone discussion on June 21st, authorized her closing the store briefly on that day.

The Determination concluded that the version of events given by Walker, and supported by another employee, Ryan Barnett, were more credible than the denials made by Storms.

At the appeal hearing, United called no evidence. Their representative, Ms. Buvold, read the appeal submission. Walker called Ryan Barnett, who confirmed, under oath, the information he provided during the investigation. His evidence was not challenged in any significant way.

The burden in an appeal is on the appellant to demonstrate some error in the Determination. United has made no attempt to meet that burden. As there was nothing placed before me to justify a conclusion that the Determination was wrong in any respect, the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated May 19, 2000 be confirmed in the amount of $5,896.77, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson

David B. Stevenson
Adjudicator
Employment Standards Tribunal