

**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 -

Sylvia Smith

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Alfred Kempf

**FILE NO.:** 98/293

**DATE OF HEARING:** August 13, 1998

**DATE OF DECISION:** October 16, 1998

## **DECISION**

### **APPEARANCES**

An oral hearing was held in Kelowna on August 13, 1998. Sylvia Smith appeared on her own behalf. Kaan's Styles for all Hair Studio was represented by one of its proprietors, Malcolm Broxham.

### **OVERVIEW**

This is an appeal pursuant to Section 112 of the Act of a determination of the Director dated April 21, 1998. The determination was that Sylvia Smith was not entitled to severance pay pursuant to the termination of employment provisions in the Act.

### **ISSUE TO BE DECIDED**

The issue involves a factual dispute about whether Sylvia Smith resigned or gave two weeks notice of her resignation.

### **FACTS**

Sylvia Smith started working for the hair salon owned by Malcolm Broxham and his wife, Alix Broxham in May of 1996 as a hairdresser. She was so employed until July 21, 1997 at which time a series of conversations occurred which brought about a termination of her employment.

Prior to July 21, 1997 Sylvia Smith had decided to leave the Broxhams' salon and go to work for another salon.

On the morning of Monday July 21, 1998, Sylvia Smith telephoned the Broxham residence with the intention of giving notice of her resignation of notice. There was conflicting testimony about the number of calls that were made out that morning and what was said.

Sylvia Smith said in her oral evidence and in her written submissions that in the first call of that day

I then told Alix that the reason for my phone call was to give my two weeks notice at the salon for leaving work. I told Alix I would like their decision of what they wanted to do as soon as possible, however I was willing to stay and help out with the wedding party on Saturday the 26th, 1997. She said she would get back to me.

Alix Broxham testified that all Sylvia Smith asked about in the first call was to speak to Malcolm Broxham. Alix Broxham spoke to her husband who expected to be in meetings for much of the day. He asked Alix Broxham to find out what Sylvia Smith wanted to talk about. Alix Broxham called Sylvia Smith back at which point Sylvia Smith informed her that she was leaving the salon and wanted to talk to Malcolm Broxham about that. Sylvia Smith also said that she would be available to work the wedding party booked for the upcoming weekend. Alix Broxham made another call to Malcolm Broxham who agreed to meet with Sylvia Smith at the salon at 4 p.m. Alix Broxham then called Sylvia Smith to tell her of the time of the meeting and told her to bring some boxes to pack her things into since she had no spare boxes at the salon.

Sylvia Smith testified that she understood the meeting was simply to allow her to finalize details of her departure and remove her belongings. She considered that she had been terminated. The Broxhams considered her to have resigned.

She attended the meeting and while there are slightly differing versions of what occurred it is obvious that the parties simply became more entrenched in their understanding of the basis for Sylvia Smith's departure from the salon. She removed her personal possessions and handed over her keys and security card and left.

She then filed a complaint seeking severance pay in lieu of notice of termination.

## **ANALYSIS**

All of the witnesses who gave evidence were entirely credible. It is extremely difficult to reconcile the events of that day through the eyes of the witnesses. It is my impression of all of the evidence that Sylvia Smith did not convey to Alix Broxham what she may have intended to. I have no doubt that:

1. Sylvia Smith intended to give notice of her resignation;
2. Alix Broxham understood Sylvia Smith to be resigning immediately but offering to work a wedding the next weekend;
3. Alix Broxham told Sylvia Smith to be prepared to pack up her things when she met with Malcolm Broxham that afternoon;
4. Sylvia Smith upon hearing this assumed she was fired and attended the meeting with that frame of mind. Malcolm Broxham was acting under the assumption that she had resigned;
5. the meeting unfortunately did not serve to clarify the parties intentions;

Sylvia Smith's evidence and position was that she said that she was giving two weeks notice but would help out with the wedding on the upcoming Saturday if required. She may have intended to work out the full two weeks but she did not make this clear to the Broxhams. If she were giving two weeks notice there would be no need offer to assist with the wedding the next weekend. It is my impression on the evidence that, given the competition between salons and hairdressers for clients, Sylvia Smith assumed that the

Broxhams would not want her to work for them after she gave her notice. Rather than specifying that she was giving two weeks notice she gave notice of her resignation with an offer to help out with a wedding occurring later in the week.

There is a substantial legal difference between a resignation with an offer to help out on occasion and notice that the employee would another work two weeks. There would be no legal obligation on the Broxhams to accept the offer to help out at the wedding after a resignation. If two weeks notice had been given to the Broxhams, on the facts of this case, they would have been obliged to pay severance pay if they chose to terminate the employment contract before the expiration of the notice period.

It is understandable how Sylvia Smith's notice would be interpreted by an employer as an immediate resignation. I find this to be the only reasonable interpretation of the form of notice she gave.

The Director's delegate investigated the complaint and determined that Sylvia Smith resigned on the Monday morning. It was Sylvia Smith's burden to show that it is more likely than not that the determination was wrong. I am unable on the evidence heard to so determine.

## **ORDER**

In summary, I order under Section 115 of the *Act*, that the Determination dated April 2, 1998 be confirmed.

**Alfred Kempf**  
**Adjudicator**  
**Employment Standards Tribunal**

ACK/cef