

An appeal

- by -

644633 B.C. Ltd. operating as Domino's Pizza (Westbank)
("Domino's")

- 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: David B. Stevenson

FILE No.: 2002/431

DATE OF DECISION: October 30, 2002

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by 644633 B.C. Ltd. operating as Domino’s Pizza (Westbank) (“Domino’s”) of a Determination that was issued on July 19, 2002 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Domino’s had contravened Part 7, Section 58(3) and Part 8, Section 63(2) of the *Act* in respect of the employment of Ernst Tobias Jilg (“Jilg”) and ordered Domino’s to cease contravening and to comply with the *Act* and *Regulations* and to pay an amount of \$2,025.37.

Domino’s says Jilg was terminated for cause and, in any event, was not entitled to either length of service compensation or annual vacation pay as he was only employed by Domino’s for 27 days. Domino’s asks that the Determination be cancelled or referred back to the Director for further investigation.

The Tribunal has decided that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

ISSUE

The issues in this appeal are whether Domino’s has shown an error in the Determination sufficient to justify the Tribunal cancelling the Determination or referring the matter back to the Director.

FACTS

Domino’s operates a pizza business in Westbank. Jilg worked at the business from September 1, 1995 to April 27, 2002 as a shift runner at the rate of \$10.00 an hour. He was terminated without written notice on April 27, 2002.

The Determination noted there had been a disposition of the business effective April 1, 2002 and Jilg’s employment was continuous and uninterrupted by the sale of the business.

The Determination also notes that Domino’s was provided three opportunities to respond to the complaint filed by Jilg and failed to do so.

ARGUMENT AND ANALYSIS

In the appeal, Domino’s argues Jilg was dismissed for cause. Domino’s also argues that Jilg was given notice of termination by the previous owner of the business, had only been employed by Domino’s for 27 days and was not entitled to length of service compensation or annual vacation pay from Domino’s.

In reply the Director says the appeal on whether Jilg was terminated for just cause should be summarily dismissed as Domino’s refused or failed to cooperate in the investigation of the complaint. On the matter of Jilg’s entitlement under the *Act*, the Director argues the facts support the conclusion that his employment was continuous and uninterrupted by the sale of the business and, on those facts and unless terminated for cause, he was entitled to six weeks length of service compensation.

Jilg has filed a response denying there was any cause to terminate his employment and denying the allegations made against him in the appeal.

The first matter I must decide is whether I should consider the appeal on the issue of just cause at all. Domino's does not deny its failure or refusal to cooperate with the investigation or to respond to the correspondence from the Director asking for the employer's position on the complaint nor does it provide any explanation for that failure or refusal. The Director has referred to, and relied on, the Tribunal's decision in *Tri-West Tractors Ltd.*, BC EST #D268/96, which contained the following comment:

The Tribunal will not allow appellants to "sit in the weeds", failing or refusing to cooperate with the delegate in providing reasons for the termination of an employee and later filing appeals of the Determination when they disagree with it. An appeal under Section 112 of the *Act* is not a complete re-examination of the complaint. It is an appeal of the decision already made for the purpose of determining whether the decision was correct in the context of the facts and the statutory provisions and policies. The Tribunal will not necessarily foreclose any party from bringing forward evidence in support of their case, but we will not allow the appeal procedure to be used to make the case that should have and could have been given to the delegate in the investigative process.

I agree with the argument of the Director, confirm the validity of the comments made in *Tri-West Tractor Ltd.*, *supra*, and dismiss the appeal on the issue of just cause.

On the issue of whether Jilg was only employed by Domino's for 27 days, I am once again in agreement with the conclusion of the Director. The facts set out in the Determination, which are confirmed in the material on file and unaffected by anything contained in the appeal, clearly support the conclusion that, pursuant to Section 97 of the *Act*, Jilg's employment was continuous and uninterrupted and, accordingly, that he was entitled to six weeks length of service compensation. Domino's has not shown Jilg was given written notice of termination at any time and nothing in the Asset Purchase Agreement relating to the disposition of the business assists Domino's in that regard.

This part of the appeal is also dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated July 19, 2002 be confirmed in the amount of \$2,025.37, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal