

**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 -

88877 Investments Ltd. operating as The Manor Restaurant  
("88877" of the "Employer")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 98/568

**DATE OF HEARING:** October 26, 1998

**DATE OF DECISION:** October 29, 1998

**DECISION**

**OVERVIEW**

This is an appeal by 88877 Investments Ltd. operating as The Manor Restaurant (“888777” or the “Employer”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination which was issued on August 10, 1998 by a delegate of the Director of Employment Standards (the “Director”).

The Determination requires 88877 to pay compensation for length of service to two former employees, Craig Stanford and Corinne Stasiuk, in the amount of \$786.23 and \$2,362.10 respectively. Interest is payable on these amounts under Section 88 of the *Act*.

There are several grounds for the appeal by 88877:

- (i) Corinne Stasiuk gave notice in early August, 1997 of her intention to resign her employment effective August 31, 1997 and, therefore, she is not entitled to compensation;
- (ii) Both Ms. Stasiuk and Mr. Stanford had been informed and it was common knowledge “...at the end of July or early August” that the restaurant was to be sold;
- (iii) the Determination was issued following an inadequate investigation; and
- (iv) the Director erred in calculating Mr. Stanford’s entitlement to compensation.

A hearing was held on October 26, 1998 at which time evidence was given under oath by John Yacoub, Craig Stanford and Corinne Stasiuk.

**ISSUE TO BE DECIDED**

Did the Director err in concluding that Ms. Stasiuk and Mr. Stanford are entitled to compensation for length of service under Section 63 of the *Act*?

**FACTS**

John Yacoub is the President of 88877 which had been operating the Manor Restaurant for approximately seven years and Corinne Stasiuk had been one of its employees since February, 1991. She was employed initially as a sous chef and eventually became the restaurant’s chef.

The business was experiencing financial problems during 1995 and 1996 and those problems became serious in mid-1997. In July, 1997 Mr. Yacoub “listed” the business for sale with a local real estate agent.

In early August, 1997 Ms. Stasiuk informed Mr. Yacoub of her intention to resign her employment effective August 31, 1997. An advertisement for a “Head Chef” was placed in the *Province* on August 13-16, 1997 to recruit a replacement for Ms. Stasiuk. At about the same time, Mr. Stanford and Mr. Yacoub met and agreed that Mr. Stanford would be paid an hourly wage rather than a monthly salary.

On August 23, 1997 Mr. Yacoub received an offer to purchase the business assets with a “completion date” of September 30, 1997 or earlier if certain “subject conditions” were met.

On August 24 or 25, 1997 Mr. Yacoub asked Ms. Stasiuk to reconsider her decision to resign and, as a result of their discussion, she decided to withdraw her notice and to continue her employment. Ms. Stasiuk testified that her discussion with Mr. Yacoub led to her employment being extended with “...no specific end date.”

Mr. Yacoub received confirmation from his solicitor on September 8 or 9, 1997 that the business had been sold with a “completion date” of September 28, 1997. This was the first occasion on which the “completion date” was known with certainty. There was a staff meeting on September 12, 1997 at which time Mr. Yacoub gave written notice to each of the employees in the following form:

As per our discussion of Wednesday, 10th September, 1997 – this is to confirm that the Manor Restaurant has been sold, please be advised that all staff employment will be terminated as of the 28th September, 1997.  
(reproduced as written).

Corinne Stasiuk and Craig Stanford testified that the only staff meeting they attended at which there was a discussion about the sale of the business took place on September 12th. At that time they were given written notice that their employment would be terminated effective September 28, 1997. They acknowledged that prior to September 12, there had been many rumours about the sale of the business and they had observed various people coming to inspect the premises, etc.

Mr. Yacoub submits, on behalf of 88877, that “...everybody knew the business was for sale” and it was obvious that the volume of business had declined significantly. He also relies on the fact that many potential buyers and real estate agents visited the premises during August to view and inspect its contents.

Payroll records show the following hours of work and earnings for Craig Stanford:

Two weeks ending	Hours	\$
August 14, 1997	70.50	705.00
August 28, 1997	66.75	667.50
September 11, 1997	66.75	667.50

The Director's delegate acknowledged that those payroll data would justify an amendment to the calculations he made to determine Mr. Stanford's entitlement to compensation.

### ANALYSIS

An employer's liability to pay compensation for length of service is created by of the *Act*. An employer's liability is deemed to be discharged if, *inter alia*, an employee is given "...written notice of termination ..." [Section 63(2)(a)]

The Tribunal has consistently read Section 63(2)(a) as requiring an employer to give written notice of termination [see, for example, *Sun Wah Supermarket Ltd.* (BC EST #D324/96)]. and *R. Chamberlin operating as Supersave Gas* (BC EST #D374/97)]. In my opinion, there are very valid policy reasons why the Legislature has required written notice to be given under Section 63(3)(3). One reason must be, as has been demonstrated amply in this appeal, in the absence of written notice there is likely to be uncertainty in the minds of employees as to precisely when their employment will terminate. Another reason, as the Director's delegate put it in the Determination, must be: "...to resolve any potential conflicts as to whether (notice) was given at all."

I have reviewed the various unsworn written statements which were tendered as evidence by the parties. However, I have relied on the direct oral evidence given under oath at the hearing to establish any crucial or central facts.

For these reasons, I agree with the finding made in the Determination that "... the first notice of termination that Stasiuk and Stanford received was that of September 12, 1997." This view is reinforced by Mr. Yacoub's evidence at the hearing that he did not know with certainty until September 10, 1997 that the "completion date" for the sale of the business would be September 28, 1997. Between August 23rd (when an offer to Purchase was received) and September 10th (when the "completion date" was confirmed) the "completion date" may have been September 30th, or earlier, depending on the removal of subject clauses. In any event, there is no evidence of written notice being given to the employees prior to September 12, 1997.

The Employer cannot rely on Section 63(3)(c) of the *Act* and Ms. Stasiuk's notice of her resignation because the notice was withdrawn on or about August 24, 1997 during the conversation between Ms. Stasiuk and Mr. Yacoub. I find that Ms. Stasiuk's continued employment after that date was not for a specified duration and, therefore, by the time that she received written notice of termination on September 12th, she had completed six

consecutive years of employment. The Director has calculated her entitlement to compensation correctly in accordance with Section 63(4) of the *Act*.

One of the ground for the Employer's appeal is ;the alleged inadequacy of the investigation prior to the Determination being issued on August 10, 1998. However, at the hearing Mr. Yacoub acknowledged that it was likely that his discussion with the Director's delegate probably lasted for approximately one hour. Mr. Yacoub was also unaware of telephone messages which the Director's delegate had left for him in mid-July, 1997 and which therefore, he did not return. I can find no basis for concluding that the investigation was inadequate, as alleged by the Employer and, therefore, this ground of appeal must fail.

I should note, in concluding my analysis, that the findings which I have made above should not be taken to imply, in any manner whatsoever, that Mr. Yacoub operated his business in anything other than a professional and business-like manner. Also, my findings should not be interpreted as questioning Mr. Yacoub's credibility.

**ORDER**

I order, under Section 115 of the *Act*, that the Determination be varied to amend the amount of compensation to which Mr. Stanford is entitled. In all other respects I would confirm the Determination.

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**