

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 -

Sanji Enterprises Ltd. operating as the Pantry Family Restaurant
("Sanji")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE NO.: 98/596

DATE OF HEARING: November 6, 1998

DATE OF DECISION: November 17, 1998

DECISION

OVERVIEW

Sanji Enterprises Ltd. operating as the Pantry Family Restaurant (“Sanji” or “the employer”) appeals, pursuant to section 112 of the *Employment Standards Act* (the “Act”), a Determination by a delegate of the Director of Employment Standards dated September 1, 1998. The Determination is that Kelly L. McKenzie neither quit, nor was terminated for reasons of just cause, with the result that Sanji was ordered to pay compensation for length of service of \$266.70 with vacation pay and interest on top of that amount.

ISSUES TO BE DECIDED

On appeal, the employer claims that the Determination is wrong in various respects including the matter of whether or not the employee was insubordinate.

The appellant failed to appear at the hearing set in the appeal. That raises the issue of whether or not the Tribunal should proceed further in the appeal.

FACTS

Kelly L. McKenzie worked for Sanji at the Pantry Family Restaurant. She left work early on Sunday, May 17, 1998. That was the end of her employment.

McKenzie filed her Complaint. She claimed wrongful dismissal. The delegate assigned the Complaint found that the employee did not quit, she was terminated. The delegate goes on to find in the Determination that, in terminating the employee, Sanji did not have just cause.

Jagdev Sandher, on behalf of Sanji, appealed the Determination. The appeal led the Tribunal’s Registrar to set a date for a hearing in the matter of the appeal. By notice of hearing dated October 9, 1998, she set the hearing for 9:00 a.m., November 6, 1998. The notice specifies that the hearing would held be at Library Square, 8th Floor - 360 West Georgia Street in Vancouver.

I arrived for the hearing at the appointed time and place. No one representing the employer was there. I waited 20 minutes in the hope that the appellant might arrive. No one did.

It is now the 10th of November. I am told that Sanji has made no attempt to explain its absence on the 6th.

ANALYSIS

Sanji was notified of the hearing set in its appeal. The appellant did not attend the hearing, nor has it provided a reasonable explanation for its absence. It may be that the appeal has been abandoned, or it may be the employer attaches little importance to the appeal. If it is the latter, then the appeal is dismissed, pursuant to section 114 (1)(c) of the *Act*, on the basis that it is frivolous, vexatious, trivial or not brought in good faith.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination dated September 1, 1998 be confirmed in the amount of \$282.51, together with whatever further interest has accrued pursuant to Section 88 of the *Act*, since the date of issuance.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunals