



Citation: Patrick Beaulieu (Re)
2019 BCEST 66

An appeal

- by -

Patrick Beaulieu
(the “Appellant”)

- 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 (as amended)

PANEL: James F. Maxwell

FILE NO.: 2019/26

DATE OF DECISION: July 10, 2019

DECISION

SUBMISSIONS

Patrick Beaulieu	on his own behalf
Ken Krunick	on behalf of Cottonwood R.V. Sales & Service Ltd.
Carrie H. Manarin	delegate of the Director of Employment Standards

OVERVIEW

1. On August 30, 2018, Patrick Beaulieu (the “Appellant”) filed a complaint with the Employment Standards Branch as against Cottonwood R.V. Sales & Service Ltd. (“Cottonwood”). The Appellant alleged that he had been dismissed from his employment with Cottonwood. The complaint sought payment from Cottonwood as compensation for length of service.
2. On February 13, 2019, a delegate of the Director of Employment Standards (the “Director”) issued a determination (the “Determination”) pursuant to the *Employment Standards Act* (the “ESA”), in which the Director dismissed the Appellant’s complaint. The Director concluded that the Appellant had not been terminated from his employment with Cottonwood but had resigned of his own volition. For this reason, the Director concluded that Cottonwood was not obligated to pay compensation for length of service.
3. On March 18, 2019, the Appellant filed a timely appeal of the Determination.
4. In his appeal, the Appellant requests that the Tribunal refer the matter of his complaint back to the Director, pursuant to section 112(1)(a), (b), and (c) of the *ESA* on the bases that the Director erred in law in making the Determination, that the Director failed to observe the principles of natural justice in making the Determination, and that evidence has become available that was not available at the time the Determination was being made.
5. Having reviewed the Determination, the Appellant’s submissions, the submissions of the Director’s delegate, the submissions of a representative for Cottonwood, and the record of proceedings provided by the Director, I conclude that this appeal must be dismissed. Pursuant to section 115 of the *ESA*, I order that the Determination be confirmed.

ISSUES

6. The following issues fall to be determined in this Appeal:
 - Did the Director err in law in making the Determination?
 - Did the Director fail to observe the principles of natural justice in making the Determination?
 - Has evidence become available that was not available at the time the Determination was being made?

FACTS

7. The Appellant commenced work for Cottonwood in January 1994.
8. On March 9, 2018, a disagreement arose between the Appellant and his supervisor, Ken Krunick (“Krunick”). That disagreement continued on March 12, 2018. Following this disagreement, the Appellant gathered together his tools on March 12, left the workplace, and has never returned.
9. The Appellant filed a complaint against Cottonwood on August 30, 2018, within the time period contemplated by the *ESA* for doing so.
10. In his complaint, the Appellant contended that he was wrongfully dismissed from his employment with Cottonwood. The Appellant sought compensation for length of service.
11. On February 1, 2019, the Director conducted a formal hearing of the Appellant’s complaint. Sworn testimony was provided by the Appellant, Krunick, and two other Cottonwood employees.
12. On February 13, 2019, the Director issued a Determination. In the Determination, the Director found that a disagreement had arisen on March 9, 2018, between the Appellant and Krunick, regarding the amount of time that it was taking the Appellant to complete his duties. As a result of that disagreement, the Appellant left the workplace. The Appellant returned to the workplace on March 12, 2018, and the disagreement between the Appellant and Krunick continued. The Director found, as a fact, that the Appellant asked Krunick if Cottonwood required notice of resignation. Krunick replied that it was not necessary for the Appellant to give notice of resignation. Thereafter, the Appellant gathered together his tools and left the Cottonwood workplace and has not returned.
13. The Director held that the Appellant had not been terminated from his employment with Cottonwood, but rather had resigned. The Director dismissed the complaint, finding that Cottonwood was relieved of the obligation to pay compensation for length of service by virtue of the Appellant’s resignation.
14. On March 18, 2019, the Appellant filed the within Appeal with the Tribunal.
15. On May 22, 2019, the Director tendered submissions in response to the Appellant’s appeal. The Director argued that it was reasonable to conclude, based upon the evidence at the hearing, that the Appellant exhibited an intention to resign and followed through on that intention by removing his tools and permanently leaving the workplace.
16. On June 4, 2019, Cottonwood tendered submissions in response to the Appellant’s appeal. Cottonwood argued that at no time did Krunick tell the Appellant that he was fired.
17. The Appellant was afforded the opportunity to tender further submissions in response to those tendered by the Director and Cottonwood. The Appellant submitted nothing further.

ANALYSIS

18. Section 112(1) of the *ESA* provides that a person may appeal a Determination on one or more of the following grounds:
- a) the director erred in law;
 - b) the director failed to observe the principles of natural justice in making the determination;
 - c) evidence has become available that was not available at the time the determination was being made.
19. In the present case, the Appellant cites all three of these grounds as bases upon which the Determination should be referred back to the Director.
20. The burden is on the Appellant to persuade this Tribunal that there is justification to interfere with the Determination on any one of these statutory grounds.
- (i) Did the Director err in law in making the Determination?**
21. It is important to note that this Tribunal has held, in *Britco Structures Ltd.*, BC EST # D260/03, that section 112 of the *ESA* does not provide for an appeal based on errors of fact, and the Tribunal has no authority to consider appeals which seek to have the Tribunal reach a different factual conclusion than was made by the Director unless the Director's findings raise an error of law.
22. This Tribunal has adopted the following definition of "error of law" set out by the British Columbia Court of Appeal in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, [1998] B.C.J. No. 2275 (B.C.C.A.):
- a misinterpretation or misapplication of a section of the applicable legislation;
 - a misapplication of an applicable principle of general law;
 - acting without any evidence;
 - acting on a view of the facts which could not reasonably be entertained; and
 - adopting a method of assessment which is wrong in principle.
23. The Appellant, in his appeal materials, did not specify the error or errors that he believes that the Director committed in reaching the Determination, other than to say that he did not intend to quit. The Appellant does not suggest that the Director misinterpreted or misapplied any particular section of the *ESA*; nor does he suggest that the Director acted without any evidence. I therefore conclude that the Appellant's appeal alleges the Director misapplied an applicable principle of general law or acted on a view of the facts which could not be reasonably entertained.
24. The Director considered the testimony of the Appellant, Krunick, and the two employee witnesses. The Director found, as a fact, that there had been a disagreement between the Appellant and Krunick on March 9, following which the Appellant left the workplace. The Director found that the Appellant returned to the workplace on March 12, and the disagreement between the Appellant and Krunick continued. The

Director found, as a fact, that during this discussion the Appellant asked Krunick how much notice of resignation he required. The Director found that after this discussion, the Appellant gathered his tools and left the workplace. These were findings of fact and are not subject to review.

25. In the Determination, the Director referred to the decision of this Tribunal in *Re: Burnaby Select Taxi and Zoltan Kiss*, BC EST # D091/96 [“*Kiss*”], as setting out the test for distinguishing whether an employee has resigned. In that decision, the Tribunal stated that:

... The right to quit is personal to the employee and there must be clear and unequivocal facts to support a conclusion that this right has been voluntarily exercised by the employee involved. There is both a subjective and an objective element to a quit: subjectively, the employee must form an intent to quit employment; objectively, the employee must carry out an act inconsistent with his or her further employment.

26. I agree that this is the appropriate test to determination if an employee has resigned.

27. The Director applied the test from *Kiss, supra*, to the fact that the Appellant had asked his employer how much notice of resignation the employer required. The Director found that this statement evidenced an intention on the part of the Appellant to resign. The Director held that this finding satisfied the subjective element of the *Kiss* test.

28. The Director then found that by gathering his tools and leaving the workplace, without subsequently returning, the Appellant carried out an act that was inconsistent with his continued employment. The Director found that this act satisfied the objective element of the *Kiss* test.

29. I find that the Director correctly stated and applied the applicable principle of general law, with respect to assessing whether the Appellant resigned from his employment. The Director correctly concluded that the actions of the Appellant amounted to a resignation and relieved the employer of any obligation to pay compensation for length of service.

30. It certainly cannot be said that the Director acted on no evidence or on a view of the facts that could not be reasonably entertained. It is clear that the Director considered the evidence given by the witnesses at the hearing. The Director’s view of the facts was reasonable.

31. I find that the Director committed no error of law in arriving at the Determination.

(ii) Did the Director fail to observe the principles of natural justice in making the Determination?

32. In his appeal form, the Appellant alleged that the Director failed to observe the principles of natural justice in making the Determination.

33. The Appellant has provided no specifics, or evidence, as to the manner in which the Director allegedly failed to observe the principles of natural justice.

34. This Tribunal, in *Re: Milan Holdings*, BC EST # D559/97, addressed the question of natural justice and bias in the decisions of adjudicators. The Tribunal recognized the elements of the adjudicative process that must be satisfied to demonstrate procedural fairness:

Under the current *Act*, the investigative process commences with the filing of a complaint with the Director of Employment Standards under section 74. ... At the investigative stage, the Director must, subject to section 76(2), enquire into the complaint, receive submissions from the parties, and ultimately may issue a determination that affects the rights and interests of both the employer and the complainant employee(s). In my view, and consistent with the authorities previously discussed, a determination can only be properly issued following an unbiased investigation.

35. I am satisfied that the Director observed the principles of natural justice in conducting a hearing and in evaluating the testimony provided therein. The Appellant has presented no compelling evidence, or indeed any evidence whatsoever, in support of his allegations of breach of natural justice. I dismiss this ground of appeal.

(iii) Has evidence become available that was not available at the time the Determination was being made?

36. The Appellant has cited as one of the grounds for his appeal that evidence has become available that was not available at the time the Determination was made.
37. The Appellant has tendered no new evidence that was unavailable at the time of the Determination. For this reason, I dismiss this ground of appeal.

ORDER

38. Pursuant to section 115 of the *ESA*, I confirm the Determination.

James F. Maxwell
Member
Employment Standards Tribunal