

An appeal

- by -

Michelle Eserjose
(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: Allison Tremblay

FILE NO.: 2019/49

DATE OF DECISION: August 14, 2019

DECISION

SUBMISSIONS

Michelle Eserjose on her own behalf

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “ESA”), Michelle Eserjose (the “Appellant”) has filed an appeal of an April 9, 2019, determination (the “Determination”) of Aleksandra Zivkovic, a delegate of the Director of Employment Standards (the “Delegate”). The Delegate found that the Appellant’s former employer, Coastline Cleaning Services Ltd. (the “Employer”), did not owe the Appellant compensation for length of service as the Employer had just cause to terminate her employment.
2. On her appeal form, the Appellant checked off as grounds of appeal that she alleged an error of law and a failure to observe the principles of natural justice. The Appellant did not provide written reasons and argument in support of either of these grounds of appeal with her appeal. The Tribunal’s Registrar wrote to the Appellant asking her to provide them, noting that its request was not an extension to the statutory appeal period. The Appellant did not respond to the Registrar’s request.
3. I find I am able to determine this appeal based on the material provided by the Appellant, consisting of the appeal form, the Determination and Reasons for Determination, and the Record provided by the Delegate.

ISSUE

4. Should the Tribunal dismiss the appeal under section 114 of the *ESA*?

THE FACTS AND ANALYSIS

5. The essential facts of this matter are set out in the Determination.
6. The Appellant started her employment with the Employer on August 24, 2016, as a Cook Helper. She worked full time until March 6, 2018.
7. Having exhausted her vacation entitlement, the Appellant asked the Employer for an unpaid leave of absence from March 7 to April 6, 2018. The Employer granted her an unpaid leave of absence from March 7 to 18, 2018. It further offered that she could extend the leave to April 6, 2018, if she resigned her full-time position and dropped down to casual status, meaning she would have no guarantee of hours and the Employer would determine her work schedule.
8. On March 8, 2018, the Appellant sent a text to her manager stating she would return to work on April 24, 2018. The Employer considered the text a resignation of her full-time position.

9. On April 23, 2018, the Appellant sent an email to her manager stating that she would not be available for work until further notice. In reply, the Employer told her she was not permitted to attend the work site and asked her to book a meeting at the head office. The Appellant told the Employer she was out of the country and would contact the Employer to book the meeting when she returned. She contacted the Employer to book the meeting on or about May 30, 2018.
10. In a meeting on June 5, 2018, the Employer informed the Appellant that it considered her to have quit by unilaterally extending her leave of absence and not communicating with it for a month.
11. The Delegate reviewed the submissions of the Appellant and Employer, reviewed the law on resignation under the *ESA*, and determined that the Appellant had not formed the subjective intention to quit. The Delegate then considered whether the Employer had just cause to terminate the Appellant's employment. The Delegate held that the Employer had just cause to terminate the Appellant for absenteeism and insubordination when she failed to return to work contrary to the Employer's clear direction.
12. Aside from checking off on the appeal form that she claims the Delegate erred in law and that there was a breach of natural justice, the Appellant provides no information to explain the grounds for her appeal. It is not for the Tribunal to guess at what grounds the Appellant may have put forward. The Appellant bears the burden of showing that the Delegate erred and has not met that burden on either ground.
13. Section 114(1)(f) of the *ESA* provides that the Tribunal may dismiss an appeal without a hearing if there is no reasonable prospect that the appeal will succeed.
14. There being no basis argued on which the Tribunal could overturn the Determination, I find that there is no reasonable prospect the appeal can succeed. I dismiss it under section 114(1)(f) of the *ESA*.

ORDER

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

Allison Tremblay
Member
Employment Standards Tribunal