

An appeal

- by -

Baljit Gill

- 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.: 2001/754

DATE OF DECISION: January 7, 2002

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Baljit Gill of a Determination that was issued on October 3, 2001 by a delegate of the Director of Employment Standards (the “Director”).

Baljit Gill had filed a complaint with the Director under the *Act* alleging he was entitled to length of service compensation from his former employer, Hudson’s Bay Company (the “Bay”). The Determination concluded the *Act* had not been contravened, ceased the investigation of the complaint and closed the file.

Baljit Gill says the decision is wrong.

ISSUE

The issue in this appeal is whether Baljit Gill has shown the decision of the Director not to determine his employment with the Bay to have been terminated was wrong.

FACTS

The relevant facts are brief. The Bay operates warehousing and retail outlets in several locations in the province. Baljit Gill worked at the Bay’s Western Distribution Centre as a warehouseperson. He was employed from June, 1993 to April, 2001. He was originally hired as an on-call auxiliary employee. In 1995, Baljit Gill applied for, and received, a regular part-time position, described in the Determination as a W2, and in 1998 he was promoted to a regular part-time W3.

In 1999, Baljit Gill obtained another part-time job and limited his availability for work with the Bay. The Bay became dissatisfied with Baljit Gill’s lack of availability and told Baljit Gill on several occasions that his status might be reviewed if he continued to limit his availability. The Bay said that Baljit Gill’s supervisor met with him on January 17, 2001 and told him that unless he made himself available for shifts as required, his regular part time status and job classification (Warehouse 3) would be changed to auxiliary (Warehouse 2). A further meeting occurred on January 26, 2001, during which Baljit Gill acknowledged he would have to go to Auxiliary status. According to the Bay, he was told at that time his pay rate would change. This meeting was followed by a letter dated February 7, 2001, which formally advised him of the change in status and wage rate.

The Determination reviewed the circumstances and concluded there had been a substantial alteration in a condition of Baljit Gill's employment, but did not determine Baljit Gill had been terminated as the Director was of the view it was not unreasonable for the Bay to have returned Baljit Gill to auxiliary status.

ARGUMENT AND ANALYSIS

The burden in this appeal is on Baljit Gill to persuade me that the Determination is wrong and that the Tribunal should exercise its authority under Section 115 of the *Act* to cancel or vary it.

Under Section 66 of the *Act*, the Director may determine that employment has been terminated:

66. *If a condition of employment has been substantially altered, the director may determine that the employment of an employee has been terminated.*

In his appeal, Baljit Gill says he voluntarily gave up his part-time status, and that is all he thought he was doing. He claims he was not aware he was being 'demoted' and given a pay cut except at the end of the discussion on January 26, 2001. He says if he had known beforehand he would not have "gone along with it".

In response to the appeal, the Director says the pay reduction that accompanied Baljit Gill's change in status was consistent with the formalized wage structure established by the Bay for the warehouse and it does not seem reasonable that Baljit Gill should have believed he would have maintained the same rate of pay in the Auxiliary W2 position as he had in the Regular Part Time W3 position. The Bay, in their reply, says Baljit Gill was aware of the wage scale associated with the different classifications.

While I do not entirely agree with the approach taken by the Director to Section 66 of the *Act*, I find no error in the result. There can be no disagreement with the conclusion that there was a substantial alteration in a condition of employment. Whether that substantial alteration was reasonable or unreasonable does not, it seems to me, address the question in terms required by the *Act*. In the circumstances, the correct approach was to decide whether the Bay had cause to move Baljit Gill to auxiliary status. In my view the Bay had established there was cause to demote Baljit Gill to auxiliary status. As a result of that conclusion, I am not persuaded the Tribunal should interfere with the Determination.

The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated October 3, 2001 be confirmed.

David B. Stevenson
Adjudicator
Employment Standards Tribunal