Employment Standards TRIBUNAL

An appeal

- by -

Gasmaster Industries Inc.
("Gasmaster")

- 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.: 2002/514

DATE OF DECISION: January 6, 2003

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the *"Act"*) brought by Gasmaster Industries Inc. ("Gasmaster") of a Determination that was issued on September 19, 2002 by a delegate of the Director of Employment Standards (the "Director"). The Determination concluded that Gasmaster had contravened Section 63 of the *Act* in respect of the employment of Romeo S. Pangan ("Pangan") and ordered Gasmaster to cease contravening and to comply with the *Act* and to pay an amount of $805.22.

Gasmaster says the Determination wrongly concluded that Pangan was entitled to three weeks length of service compensation.

The Tribunal has decided that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

ISSUE

The issue in this appeal is whether the Director erred in concluding Pangan's employment, was for the purposes of the *Act*, continuous and uninterrupted from October 20, 1998 to February 6, 2002.

FACTS

Gasmaster operates a production facility. Pangan was employed by Gasmaster from October 20, 1998 to February 6, 2002 as a boiler assembler. At the time his employment ended, Pangan's rate of pay was $18.50 an hour for a regular 40 hour week.

On his termination, Pangan was paid two weeks compensation for length of service in the amount of $1522.65. He claimed he had been employed by Gasmaster for four years and was therefore entitled to four weeks' length of service compensation.

The Director found that Pangan had been continuously employed by Gasmaster for more than three years, but less than four years and that he was entitled to three weeks' length of service compensation.

During the investigation, Gasmaster took the position that Pangan's employment could not be viewed as continuous and uninterrupted between October 20, 1998 and February 6, 2002. Gasmaster asserted that Pangan was employed for two separate periods during that time - the first period from October 20, 1998 to March 30, 2000, when he quit after his request for an extended vacation was denied, and the second from May 30, 2000, when he was re-hired following his return from vacation, to February 6, 2002.

The Director did not accept that Pangan's employment with Gasmaster had been terminated on March 30, 2000. The Determination indicates the Director relied on several pieces of payroll and personnel information in reaching that decision, including a Record of Employment issued on March 30, 2000, showing Code K (Other) with the comment " Temporary Layoff". From comments made in the Determination and in the reply submission on the appeal, the Director was concerned that some

information she received from Gasmaster during the investigation had been altered. In the Determination, the Director stated:

> The only evidence that remotely suggests that the complainant was terminated and rehired in 2000 is the record of rates of pay, benefits and vacation. As this record appears to have been altered, I am not accepting this as adequate proof that the complainant resigned and was re-hired.

ARGUMENT AND ANALYSIS

The burden is on Gasmaster to show the Determination is wrong in law, in fact or in some combination of law and fact (see *World Project Management Inc.*, BC EST #D134/97 (Reconsideration of BC EST #D325/96)). An appeal to the Tribunal is not a re-investigation of the complaint nor is it simply an opportunity to re-argue positions taken during the investigation.

Gasmaster argues that the Record of Employment issued on March 30, 2000 and which recorded the reason for issuing it as a temporary lay off was done at the request of the Pangan, "so he could collect unemployment insurance", and the conclusion that his employment was continuous from October 20, 1998 to February 6, 2002 was wrong. Gasmaster says the record was only altered to reflect that Pangan was 'rehired' on May 30, 2000.

The Director argues there is no evidence, except the altered record, that supports the argument made by Gasmaster. Against that record, the Director points to the following material in addition to that referred to above:

- a letter on company letterhead, dated October 25, 2001, which includes the statement, "This is to confirm that Mr. R. Pangan has been employed at Gasmaster Industries since October 1998"; and

- a Record of Employment issued on February 6, 2002 indicating Pangan was employed from February 8, 1999 to February 6, 2002.

The Director also refers to a letter dated August 28, 2002 outlining the Director's findings on Pangan's complaint, which included the Director's conclusion that Pangan had been continuously employed from October 20, 1998 to February 6, 2002. The submission of the Director indicates that Gasmaster filed no response to that letter notwithstanding the letter advised that if there was any additional information, it should be provided before September 6, 2002.

I agree with the Director's position. The body of available evidence does not, on balance, support a conclusion that Pangan terminated his employment in late March, 2000. The altered record is confusing at best and I cannot find fault in the decision of the Director to give it no weight in light of the other evidence. Gasmaster has not met its burden in this appeal to show the conclusion of the Director is wrong and the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated September 19, 2002 be confirmed in the amount of $805.22, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal