

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 -

Tamra Daechsel

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 98/703

DATE OF HEARING: January 8, 1999

DATE OF DECISION: January 18, 1999

DECISION

APPEARANCES

Tamra Daechsel on her own behalf
Dan Saam on behalf of Squamish Freightways Ltd.

OVERVIEW

This is an appeal by Tamra Daechsel, under Section 112 of the *Employment Standards Act* (“the *Act*”), against a Determination which was issued on October 19, 1998 by a delegate of the Director of Employment Standards (“the Director”). The Director determined that Ms. Daechsel had terminated her employment with her former employer, Squamish Freightways Ltd., (“Squamish”) and, therefore, was not entitled to compensation for length of service (Section 63 of the *Act*).

Ms. Daechsel appeals on the ground that the Director erred in determining that she had resigned. In her submission, the facts support a finding that her employment was terminated by Squamish.

A hearing was held at the Tribunal’s offices on January 8, 1999 at which time evidence was given under oath by Tamra Daechsel and Dan Saam.

ISSUES TO BE DECIDED

Did the Director’s delegate err by determining that Ms. Daechsel terminated her employment with Squamish Freightways Ltd. on March 23, 1998?

FACTS

The following facts are not in dispute: Ms. Daechsel had been employed continuously by Squamish as a customer service representative/billing clerk for approximately 8 1/2 years prior to her last day of employment (March 23, 1998). During the afternoon of that day, Ms. Daechsel was working with an employee for whom March 23 was her first day of employment. at Squamish. At approximately 3:30 p.m., Ms. Daechsel took a telephone message for Peter McLean (Operations Manager), her supervisor. Mr. McLean was not pleased about the way in which Ms. Daechsel dealt with that call. He spoke about his concerns to Dan Saam (General Manager) who, in turn, spoke to Ms. Daeschel shortly afterwards. That is an issue to which I will return as it is central to this appeal.

Dan Saam acknowledges candidly that Ms. Daechsel was “...a very dedicated employee...” who was “...not only the most knowledgeable staff member relating to special

rates and contracts but also our most senior staff member in this department.” Ms. Daechsel had a total of 19 years experience in the trucking industry.

The Determination contains a comprehensive description of the investigation which was undertaken by the Director, including interviews with the President and two other employees. It also sets out the relevant provisions of the *Act* (Section 63) and includes reference to an earlier decision of the Tribunal, *Burnaby Select Taxi Ltd.* (BC EST #D091/96) which describes the appropriate test to apply in determining whether an employee has resigned from his or her employment. The Director, having set out the various findings of fact she made, as well as her analysis of those facts, concluded that she was:

“...satisfied that the investigation has revealed that the complainant terminated her employment with Squamish Freightways Ltd., by first stating that she quit and second by taking action not consistent with continued employment with this employer. The liability to pay compensation for length of service pay is deemed to be discharged by the employer due to the complainant’s choice to terminate her own employment. Therefore, there has not been a contravention of Section 63(2)(b) the *Employment Standards Act.*”

The central issue in this appeal is whether Ms. Daechsel resigned or was dismissed. To allow me to decide whether the Director erred in determining that Ms. Daechsel had resigned, the evidence heard under oath from Ms. Daechsel and Mr. Saam focused on what happened on March 23, 1998 after Mr. McLean received the telephone message which she had taken for him. Mr. McLean asked Ms. Daechsel why the customer had called him and she explained that she was handling other telephone calls at the same time. Mr. McLean requested that, in future, she comply with usual company procedure and indicate on the written message why the person has called. Peter McLean went to speak with Dan Saam in his office and, soon afterwards, Mr. Saam called Mr. Daechsel into his office to speak with her. There is considerable disagreement between Ms. Daechsel’s and Mr. Saam’s recollection of events of the brief meeting which lasted between 2 and 5 minutes.

After setting out Ms. Daechsel’s and the Employer’s “position”, the Director reached the following conclusion at page 5 of the Determination:

I prefer the employer’s position as to what took place in his meeting with the complainant. I accept that the employer, feeling the situation getting out of control, instructed the complainant to clear her things and leave. Statements made by witnesses support that the complainant was loud and agitated during the meeting between the employer and the complainant. I accept that the complainant’s statement to the employer that she quit, was said in anger, and therefore, cannot in and of itself be proof of her intent to sever her employment relationship. However, her actions following her stating that she quit are acts that would not be consistent with further employment. These are:

- a) The complainant removed her belongings from the premises.
- b) The complainant contacted her employer after she had left the premises requesting that her final pay be prepared.
- c) The complainant did not return to the employer's place of business.
- d) The complainant sought out and secured alternate employment within a matter of two to three days of the incident.

At the hearing, Ms. Daechsel testified that when she went into Mr. Saam's office she shut the door and sat down. He then told her that her "services were no longer needed" and, as a result, she was so "shocked" that she "didn't know what to say". She also testified that as she was about to speak, Mr. Saam said "...I don't want to argue." Ms. Daechsel also testified that she was not told why her services were no longer required and she left Mr. Saam's office without speaking. At that point, she went to her desk feeling "angry and frustrated" as well as being "shocked". She returned to Mr. Saam's office a short while later and said: "Put it this way, I quit." She then said "good-bye" to her new co-worker and when asked by another co-worker "What's up?", she did not answer and left the offices. She believed she had been dismissed.

Mr. Saam testified that when Ms. Daechsel came to his office she was "very argumentative" as he began to tell her that Peter McLean was very upset and that there was a problem which had to be resolved. He also testified that his intent was to inform Ms. Daechsel that she was to be suspended as a disciplinary measure, but Ms. Daechsel "...began a vigorous defense of her action" which was also quite loud, was "out of control" and was "...becoming rapidly disruptive." At that point, he testified, he wanted to restore some order to the situation and asked Ms. Daechsel to "...collect her things and to leave the building." Mr. Saam denies that he told Ms. Daechsel that her services were no longer required. He acknowledged that he did not tell Ms. Daechsel that she was suspended, although that was his intent. He was surprised, he testified, that Ms. Daechsel came back to his office shortly after leaving it and said either: "Put it this way, I quit", or "Let's just say I quit".

Later that afternoon, Ms. Daechsel contacted Mr. Saam by telephone following which he requested that her final pay cheque and Record of Employment (ROE) be prepared. He asked that the ROE show "lay-off" as the reason for it being issued as he did not want to deny Ms. Daechsel access to unemployment insurance benefits.

ANALYSIS

Ms. Daechsel appeals the Determination because she believes that the Director was wrong in deciding that she resigned from her employment. Ms. Daechsel believes that she was dismissed.

As the appellant, Ms. Daechsel must establish, on the balance of probabilities, that the Determination has been made in error.

This appeal does not turn on whether there was “just cause” for Squamish to terminate Ms. Daechsel’s employment. Squamish does not allege that it had just cause to dismiss Ms. Daechsel. Rather, it submits, the Director determined correctly that Ms. Daechsel resigned. For that reason, I have given no weight, to Mr. Saam’s testimony concerning Ms. Daechsel’s attitude possibly affecting her performance at work. If fact, Mr. Saam acknowledged that Ms. Daechsel was a dedicated and knowledgeable employee.

The Director takes care to explain, at page 4 of the Determination, that she relies on the reasoning in *Burnaby Select Taxi Ltd.* (BC EST #D091/96) to the effect that there must be evidence of a (subjective) intention by an employee to resign from employment and subsequent (objective) actions that are inconsistent with maintaining the employment relationship. She also sets out, at page 5 of the Determination, the actions taken by Ms. Daechsel (following the brief meeting in Mr. Saam’s office) which led her to conclude that Ms. Daechsel had formed an intent to resign.

I agree with the Director that Ms. Daechsel’s actions were “...not consistent with continued employment.” Ms. Daechsel has not established through her appeal and her testimony that the Director’s findings of fact are incorrect. As in all cases where credibility is an issue, I must assess conflicting evidence by asking what is “...in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions “: *Faryna v. Chorny*, (1952) 2 D.L.R. 354 (B.C. Court of Appeal).

Ms. Daechsel’s evidence to the contrary has not convinced me that the Director erred, following her investigation, by preferring Mr. Saam’s recollection of what took place during his meeting with Ms. Daechsel. Having said that, I should also add that it would clearly have been preferable and may have avoided any misunderstanding if Mr. Saam had made a clear statement that he was suspending Ms. Daechsel rather than asking her to “collect her things and leave...” I also concur with the reason given by the Director for accepting the explanation given by Mr. Saam for putting “laid off” rather than “quit” on the ROE.

As noted above, this is an appeal of a Determination. It is not a re-investigation of a complaint. The appeal provisions (Sections 112;114) and the purposes of the *Act* (Section 2), do not contemplate that I should simply substitute my reasons and findings for those

made by the Director. That, in essence, is what Ms. Daechsel's appeal asks me to do. For all of the reasons given above I decline to do so.

ORDER

I order, under Section 115 of the *Act*, that the Determination be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC:lb