



An appeal

- by -

Katherine Chow  
("appellant" or "employee")

- 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:** Paul E. Love

**FILE No.:** 2000/727

**DATE OF DECISION:** January 22, 2001

## DECISION

### OVERVIEW

This is an application, by the employee, Katherine Chow, of a Determination dated July 25, 2000. The employee claims that the Delegate erred in finding that the employee resigned, and that the resignation was not as a result of a substantial alteration of the terms and conditions of employment within the meaning of the *Employment Standards Act* (the “Act”). While it is clear that the employer, assigned additional job duties to Ms. Chow, some of the duties were in the nature of a promotion, the employee received an increase in pay, and the changes were not fundamental changes in the employment relationship. The employee resigned voluntarily from her position after a period of absence due to sickness. There was no error in the assessment of the evidence by the Delegate, and I confirmed the Determination.

### ISSUES TO BE DECIDED

Did the Delegate err in determining that there was no substantial alteration of the terms and conditions of employment within the meaning of s. 66 of the *Act*, and err in finding that the employee resigned from employment with Vancouver Gear Works?

### FACTS

This matter proceeded by way of written submissions, without an oral hearing.

Ms. Chow commenced her work with Vancouver Gear Works Ltd. in July of 1992, and there was a short hiatus between May of 1994, to July of 1994, when she left the employer. Ms. Chow returned to the employer again in 1994 and this case involves the employment relationship, between July 1994 and September 30, 1998, focussed particularly on the period between March to September of 1998. Ms. Chow commenced employment with the accounts payable/receivable section of Vancouver Gear Works Ltd., on July 14, 1994. In March of 1998 the employer changed her job duties, and she assumed some duties as a purchasing agent, while continuing the accounts payable/receivable work. The employer says that Ms. Chow asked for the extra duties, and the employee says that these duties were forced on her. The Delegate found that she asked for the duties after the purchasing agent was laid off. In July of 1998, the employer laid off the receptionist, and Ms. Chow and others answered the phone.

The employer made the changes in her job function due to economic circumstances, when it was downsizing staff. In September 1, 1998 Ms. Chow became ill and took a medical leave. She did not return to the workplace and she submitted a resignation letter to the employer on September 30, 1998.

The employee claims that as a result of the added responsibilities, she was overwhelmed and went on a sick leave and subsequently had to quit her employment. The Delegate found that on the last day of work, Ms. Chow was performing a variety of job functions and was not limited to one job. The Delegate found that this did not mean that she assumed the responsibilities of two or more jobs at the same time. The Delegate found that the employer has had a right traditionally, and within reason, to change an employee's job function and that the employer can re-align the company's structure from time to time as circumstances required. The Delegate found that there was no substantial adverse change in Ms. Chow's working conditions such that one could construe that she was terminated by her employer. The Delegate found that Ms. Chow quit of her own accord.

### **Grounds for Appeal:**

The employee feels that the case was not handled in her best interests because it took a long time, from the date that she filed her complaint until the date the Delegate issued the determination.

The employee submits that the Delegate erred in the factual findings. The employee submits that the Delegate placed the burden of proof on her and incorrectly accepted the evidence of the employer.

The employee claims that the controller at the employer has slandered her since she left the company. I note that I am without jurisdiction to rule on this last matter.

### **ANALYSIS**

In an appeal of a Determination, the burden rests with the appellant to show that there is an error in the Determination such that I ought to vary or cancel the Determination.

While there has been some delay between the filing of the appeal and the Determination, I am not persuaded that this indicates that the Delegate erred in the Determination.

The appeal in this matter by the employee suggests that the Delegate erred in the factual findings that she made. In reviewing the material before me, I am satisfied that the Delegate had a rational basis for the facts that she found, and therefore it cannot be said that the determination was "manifestly unfair" or that there was no rational reason for the conclusions reached by the Delegate: *Benecken BCEST #D101/99*.

I note that the Delegate investigated a case where the employee resigned. Resignation is a right personal to the employee. Employees have many reasons why they resign from jobs. As long as the resignation was not "coerced" by the employer, and can be said to be a genuine resignation, the employee is not entitled to any compensation for length of service.

In this case the employee alleges that the employer breached s. 66 of the *Act* by overwhelming the employee with work, which was changed substantially from the work the employee performed in the past. Section 66 of the *Act* reads as follows:

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

The *Act* does not define what is meant by “substantially altered”, however, the common law related to constructive dismissal is of some relevance in understanding these words. In my view, the typical case of constructive dismissal involves a substantial alteration of terms of the employment contract related to the type of work, the location of the work, the responsibility associated with the work, the hours of work and payment for work. This list is illustrative as opposed to exhaustive. One has to look at the relationship, any legitimate expectations of the parties, and agreements reached. Typically the employee complains when the employee has been demoted from a more senior position to a less senior position. There may or may not be any intent on the employer’s part to force an employee to resign.

This workplace was not a unionized work place. In some unionized workplaces the employer has negotiated away its flexibility to respond to economic circumstances, and job positions have been defined in a collective agreement through negotiations. In my view, in a non-unionized work place, the employer has considerable freedom to assign new tasks and new responsibilities to employees, without regard to “job titles or descriptions”, as long as the alteration of the conditions of employment is not substantial.

It cannot be said in this case that there was a substantial alteration in the terms or conditions of Ms. Chow’s employment. The employee started dealing with accounts payable and receivable, she assumed some purchasing duties and some phone answering and reception duties. Here the employee took on new responsibilities, and did not apparently object to the new responsibilities at the relevant time, which was around the time of assignment. Some of the changes, particularly the purchasing duties, were in the nature of a promotion rather than a demotion. The employee did not complain that she was overworked. Her complaint to the Employment Standards Branch did not include any claim for overtime pay, so I assume that she was properly compensated for any additional time, if any, that she worked as a result of new duties. The employee did not work any extra hours, beyond the regular work day, so it is clear that she did not have the work of three people, as she alleged. She received an increase in pay. Other persons in the workplace also were involved in purchasing decisions, and there were others answering the phone. The changes in the workplace were conditioned by the employer’s need to respond to economic circumstances and not motivated by any desire to make life so difficult for the employee that she felt that she had no option but to quit.

I am satisfied that the Delegate correctly found that the resignation was genuine, and while there were some changes in the employee’s job responsibilities, it cannot be said that there

was a substantial alteration of the terms and conditions of employment within the meaning of s. 66 of the *Act*.

**ORDER**

Pursuant to section 115 of the *Act*, I order that the Decision in this matter, dated July 25, 2000 be confirmed.

***PAUL E. LOVE***

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**Paul E. Love  
Adjudicator  
Employment Standards Tribunal**