

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

Kenneth J. Paterson
("Paterson")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: James Wolfgang

FILE NO.: 96/177

HEARING DATE: April 30, 1996

DATE OF DECISION: June 10, 1996

DECISION

APPEARANCES

Ken PatersonAppellant

Dana Hummelwitness for the appellant

Peter NeufferKarlite Manufacturing Ltd.
Fred NeufferKarlite Manufacturing Ltd.

Myron Bargewitness for Karlite
Maureen Neufferwitness for Karlite
Edward Kellerwitness for Karlite
Michael Schedelwitness for Karlite
Edward Bourgeois.....witness for Karlite

Beth Lyle.....delegate of the Director
of Employment Standards (delegate)

OVERVIEW

This is an appeal by Kenneth J. Paterson (Paterson) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against Determination CDET #001078 issued by the Director of Employment Standards on February 13, 1996. In this appeal the former employee claims that wages and severance pay are owed to him by Karlite Manufacturing Ltd., (Karlite).

FACTS

Paterson was a mill worker employed by Karlite from October 8, 1992 to October 11, 1995. His rate of pay at the time of leaving Karlite was \$12.00 per hour.

On November 9, 1995, Paterson filed a complaint with the Employment Standards Branch claiming Karlite owed him .50 cents per hour from August 23 to October 11, 1995 for a Class III Occupational First Aid Course which he had taken and owed him severance pay for the period of his employment.

A Determination was issued on February 13, 1996 indicating that Karlite had not contravened the *Employment Standards Act* and no action would be taken.

ISSUE TO BE DECIDED

Is Paterson entitled to any additional wages or severance pay for the period employed?

ANALYSIS

Paterson raised many issues which to him made it impossible to continue to work for Karlite. Some of these were not work related. For example, a real estate agent asked Paterson to ensure that no one gain entry to the vacant house next door, specifically, Peter and Maureen Neuffer. Against his objection, the Neuffers entered the house. Complaints about the First Aid and WCB violations, harassment, and discrimination were work related.

Paterson claimed that Karlite were disrespectful and hostile toward him and there was evidence of harassment. He wrote a formal letter of complaint on December 12, 1994.

Peter Neuffer approached Paterson in June 1995 to take a Class 3 Occupational First Aid Course and offered a .50 cent per hour increase upon successful completion. Karlite would pay the cost (\$510.00) an wages for the ten day course.

Paterson considered the offer overnight. He recognized that it would involve many hours of home study and interfere with the custody of his daughter, which he had for the summer. It would also mean more responsibility. He agreed to take the course on the understanding he would receive more money.

Paterson failed the exam. He applied to rewrite and passed the second exam on August 23, 1995. He did not claim the \$75.00 coast of rewriting nor did he claim for the loss of one day's pay from Karlite. He felt this was his responsibility and the employer's.

He was granted a one year restricted First Aid Certificate. When he returned to work he requested some additional first aid equipment which he thought was required. He discussed this with Maureen, the Office Manager, because she held a unrestricted First Aid Certificate. She refused to order the extra equipment. He further claimed there were other illegal acts by the employer relating to an accident on the job. He claimed the employer interfered with his report in the WCB Accident Record Book. That matter is before the Workers Compensation Board.

The .50 cent increase did not appear on the pay period following the completion of the course. Paterson approached Peter Neuffer requesting his increase. Peter said he would discuss the matter with the other management personnel and get back to him.

There was no increase on the next pay period. When Paterson raised the issue again, Peter said he forgot and would discuss it with the others.

When the increase failed to appear on the third pay period, Paterson again raised the issue. Peter told Paterson to discuss the matter with his wife, Maureen, the Office Manager, the next day.

The next morning Paterson went to see Maureen. Following a brief discussion an argument ensued with some shouting and coarse language. Paterson indicated he was quitting and went downstairs. Maureen forcefully passed him on the stairway and shouted for Peter and Fred. Fred asked Paterson to wait in the lunch room while he, Peter and Maureen had a meeting.

Fred and Ed (the Plant Foreman) joined Paterson in the lunch room, and Fred told him he did not want to lose him as an employee, however, he would be required to offer a written apology to Maureen. Paterson agreed to do so. Fred then indicated Paterson would not receive the .50 cent increase at this time. Paterson then quit again and left the premises.

On October 16, 1995, Paterson wrote to Karlite outlining his claim for wages, overtime and severance pay. The overtime issue was resolved for him but he raised the question of overtime payable to other employees. That matter is not before.

Karlite presented the following, as their evidence of the events,

Karlite decided in June 1995 to have another First Aid Attendant. Maureen Neuffer, the Office Manager, held a First Aid Certificate but was not always available.

The Company approached the Plant Foreman to take the First Aid Course. He refused on the grounds that he was too busy. Karlite then offered the course to Ed Keller, who also rejected it. Neither were offered any extra money for taking it.

Karlite then approached Paterson. Karlite considered him a good employee and in fact, paid him higher wages than their other employees.

Peter Neuffer claims he did not offer Paterson an additional .50 cents per hour, however, he does admit it was discussed. He stated his response was "We'll see how it goes".

Peter recalls Paterson asking about the increase after the completion of the course, and after each of the following pay periods.

The Company had suffered an economic downturn in the summer of 1995 and this was cited as the reason for not giving Paterson the .50 cent per hour increase. However, the evidence of the Office Manager suggest the refusal was partly the economic situation and partly the dispute she had with Paterson.

In Karlite's letter dated October 16, 1995, it states, in part:

“...As to the .50 cent a(sic) hour wage increase you requested for the certification of your first aid ticket, this may or may not have been able to be negotiated, but in response to your actions and the verbal abuse you used in our office on October 11, 1995 the increase was denied.”

Karlite addressed the complaint of harassment dated December 12, 1994 by Paterson. The Company had no experience with this subject and sought outside assistance. Karlite developed a written policy against discrimination and sexual harassment in the workplace. This was read to all the employees and left in a binder in the lunchroom. From that time no further complaint were received.

ANALYSIS

I believe a sincere effort was made by Karlite to stop any sexual harassment or discrimination when it was brought to their attention. There was evidence of harassment by some of the employees but nothing suggest it was condoned or supported by Karlite.

The Company had offered the first aid course to two other employees without any offer of additional pay. They refused the offer. When offered to Paterson either he or Peter raised the question of additional money. Paterson says it was Peter. Peter says it was Paterson.

The Determination indicated there was no discussion of the .50 cent increase from June, when it was first raised in October 1995. This is inconsistent with the facts as agreed by both Parties. Further, the Determination makes the point that the failure to grant the increase was the result of a downturn in business in the summer of 1995. While that may be part of the reason, the evidence of Maureen Neuffer was the refusal was also based on the incident of October 11, 1995. Her evidence was, when asked if it was the economic situation or the incident she stated: “I think both things”. Further, in the Karlite letter dated October 16, 1995 in response to Paterson's written request for overtime (which was subsequently paid), the .50 cent premium and severance pay, the company denied the increase as a result of the October 11, 1995 incident. They also denied any claim for severance pay. This letter was signed by both Peter and Fred Neuffer.

The evidence lead by the delegate did not go to the question of if the offer had been made by Karlite to Paterson but why it had not been paid i.e. economic downturn or discipline.

Paterson began acting as a First Aid Attendant from August 23, 1995 under the direction of Maureen Neuffer. To him, he was fulfilling his part of an agreement and he expected the employer to meet theirs.

I believe the expectation of Paterson was reinforced by Peter's response to his request for more money. Peter said “We'll see how it goes”. To Paterson, I believe, that meant that if he passed the course successfully he would be paid. At no time during the four discussions that followed

this did Peter indicate they were not granting the increase. Every effort by Paterson to confirm his understanding of the agreement was not met by refusal but delay. Simply put, I believe Paterson was to receive .50 cents per hour effective August 23, 1995 as no one has told him otherwise although Karlite had many opportunities to do so.

I believe, on the basis of probability, that Paterson was denied the increase as discipline for his action of October 11, 1995. This was wrong.

As Paterson clearly resigned his employment with Karlite, although there may have been some extenuating circumstances, I find he is not entitled to any severance pay.

ORDER

Determination No. CDET 001078 is varied as follows:

Paterson is to receive .50 cents per hour for each hour worked from August 23, 1995 to October 11, 1995.

There are no other changes in Determination No. CDET 001078.

Jim Wolfgang
Adjudicator
Employment Standards Tribunal

JW:jel