

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 -

Porter & Wood Cedar Co. Ltd.
("Porter")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Jim Wolfgang

FILE NO.: 95/049

DATE OF HEARING: March 7, 1996

DATE OF DECISION: March 22, 1996

DECISION

OVERVIEW

This is an appeal by Porter and Wood Cedar Co. Ltd. (Porter) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against Determination No. CDET 000300 issued by a delegate of the Director (“Director’s delegate”) on December 1, 1995. In this appeal the employer claims that no wages are owed Gilles Beaudoin (Beaudoin) as he had quit on July 12, 1995. the employer further requests a suspension of the Determination pursuant to Section 113 of the *Act*.

An oral hearing was conducted on March 7, 1996 in Nanaimo, British Columbia.

Persons in attendance at the hearing were:

Appellant: Don Porter, Owner
Paul Gagnon, Saw filer

Complainant: Gilles Beaudoin

For the Director: Myron Wallace, Industrial Relations Officer

FACTS

Beaudoin was employed by Porter as a cuberman from November 28, 1994 to July 12, 1995. On July 12, 1995, Beaudoin left the mill and did not return until July 31, 1995 to pick up his paycheck but had called the mill to see if any work was available. There had been layoffs in the past due to a shortage of wood. Beaudoin was issued a Record of employment on July 16th which indicated the reason for issuance as “E” voluntary separation.

ISSUE TO BE DECIDED

Is Beaudoin entitled to any compensation for length of service during his employment with Porter?

ARGUMENTS

Beaudoin was originally called by Paul Gagnon, the saw filer at the mill, to begin work in November 28, 1994. Further, he had been laid off temporarily and recalled by either Gagnon or Porter on several occasions during the time he was employed. Beaudoin believe Gagnon had some supervisory control in the absence of the owner, Porter. On July 12 it is Beaudoin’s

understanding that, following a discussion with Gagnon, he was sent home or laid off for a lack of wood.

According to porter, Beaudoin did not like cutting 18” shakes (the standard being 24”) as he did not make as much money on piece work. He claims there was ample wood for both splitting machines to work but Beaudoin simply went home.

Gagnon later talked to Porter by telephone or radio indicating Beaudoin had left work. Porter said he told Gagnon if “Beaudoin goes home he won’t be coming back.”

Gagnon’s evidence was that Beaudoin was expected back at work the next day but did not return. When Beaudoin called Gagnon on July 16 he was told there was still a shortage of wood but did not indicate that Porter had terminated him. When Beaudoin picked up his cheque on July 31 he found his R.O.E. had been included showing a code “E” which indicates he had quit. After July 31 he talked to the owner’s wife on at least two occasions complaining about the terms of the R.O.E. and left messages for Porter to call him which Porter did not do.

On August 18 Gagnon signed a letter stating that Beaudoin had left work because of a shortage of wood and had not indicated that he was quitting. Porter indicates this was don by Gagnon because he did not want trouble with Beaudoin. Gagnon is less than clear on his recollection of the events.

Beaudoin had been on U.I.C. and this was cancelled when the R.O.E. was received. Beaudoin appealed the decision and, upon investigation by the Insurance Agent, he was approved for benefit as “we consider that he/she had a valid reason for leaving”. this information was sent to Porter with a provision for him to appeal the decision if he wished, explaining the procedure. Porter indicated he telephone the U.I.C. and complained about them changing the terms of the R.O.E. but did not formally appeal.

ANALYSIS

the onus of proof in this appeal rest with the appellant, Porter. The information provided by the director indicates that the U.I.C. investigated the reasons for Beaudoin leaving work on July 12, 1995 and did not find he was disqualified from receiving benefits. This fact was not appealed by Porter nor do we have any evidence that he ever indicated to Beaudoin that he was fired nor is there any documentation to that effect.

Further, if Beaudoin thought he was no longer employed by Porter why would he wait until July 31st to pick up his pay?

That leaves only one question. Did Beaudoin leave his employment with Porter voluntarily or was he subject to a temporary layoff?

Given all of the above, I am satisfied that Beaudoin left work on July 12, 1995 with the understanding he was still employed with Porter and Wood Cedar Co. Ltd.

ORDER

Pursuant to Section 115 of the *Act*, I order that Determination #CDET 000300 be confirmed.

“James Wolfgang”

James Wolfgang
Adjudicator
Employment Standards Tribunal

JW:jel