



An appeal

- by -

Daniel Robert Williamson
("Williamson")

- 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: April D. Katz

FILE No.: 200/768

DATE OF DECISION: January 23, 2001

DECISION

SUBMISSIONS:

Daniel Williamson	on his own behalf
Dawson Barber	on behalf of Paladin Security Group Ltd.
Michael Fu	on behalf of the Director

OVERVIEW

The Employee, Daniel Williamson., (“Williamson”) sought compensation for length of service when his employment with Paladin Security Group Ltd. “Paladin” in Mission ended. The Determination concluded that Williamson’s employment had not ended with Paladin and therefore no compensation was payable. Paladin was prepared to provide Williamson with work in Surrey however, Williamson considered the need to travel from his home in Mission to be unreasonable. The Director’s Delegate concluded the employment offered was reasonable and pursuant to section 65(1)(f) no compensation was payable.

ISSUE

1. Did the Director deny Williamson natural justice in conducting the investigation?
2. Did the Director error in finding that Williamson’s employment had not ended?
3. Did the Director error in finding that it was reasonable for Williamson to accept work in Surrey and therefore no compensation was payable under section 65(1)(f) of the *Employment Standards Act* (“Act”)?

ARGUMENT

Williamson has appealed on the basis that he was denied fundamental justice because he did not have an opportunity to question the other people interviewed in the investigation. He argues that Paladin was allowed to rebut his assertions but he was not allowed to refute Paladin’s assertions.

Williamson goes on to allege that the Director’s Delegate had difficulty understanding English and that the Delegate’s background had an impact on the outcome of the investigation.

Williamson states that there were a number of errors of fact or logic in the Determination. The first error he alleges was the Delegate's conclusion that it was reasonable to expect Williamson to travel outside of Mission for work. Williamson states that "The principal of work in or near Mission was I submit established."

Paladin was prepared to continue Williamson's employment in a position in Surrey, which it believes is a reasonable distance from Mission. Paladin had no work for Williamson in Mission.

THE FACTS

Williamson was employed doing security work at the Mission Junction Mall with Paladin. Williamson was told not to access the computer during his shift. The computer records showed that the computer was accessed during Williamson's shifts after he was told not to access the computer.

Paladin accepted that management at the Mission Junction Mall could no longer trust Williamson and removed him.

The only work in Mission with Paladin was at the Mission Junction Mall. Paladin was prepared to continue Williamson's employment at other locations. Williamson was not willing to go to the locations in Surrey because he had no private transportation and the public bus system did not take him to Surrey.

Williamson considered that his employment had ended and sought compensation for length of service.

ANALYSIS

The first issue raised by Williamson was that he was denied natural justice because he was not allowed to question the assertions of the witnesses interviewed by the Director's Delegate. The evidence shows that the Delegate wrote to Williamson setting out the facts submitted by Paladin and Mission Junction Mall and invited Williamson to respond. Williamson did respond and his response is reflected in the Determination.

The issue raised in the Determination was whether Williamson's employment had ended.

Paladin was no longer assigning Williamson shifts at the Mission Junction Mall. The management at the Mall had objected to Williamson looking at files on the computer during his shift. This objection was communicated to Williamson. The Mall management had communicated that the computer files were private. After Williamson was told that the computer files were not to be read someone accessed the files during his shift on security. Williamson made a number of suggestions about how the computer could have been viewed

that did not involve him looking at the screen. He also suggested how the Mall management could have taken further steps to secure the information in the computer. The fact remained that Williamson lost the confidence of the Mall management because someone used the computer during his shift on security after he knew the management did not want anyone to touch the computer. Paladin removed Williamson from the work in Mission for sound business reasons.

Paladin offered Williamson alternative work rather than ending his employment. Paladin did not refuse to assign Williamson other work, however, they had no other work in Mission.

Section 63 of the *Act* states that an employee is entitled to two week wages in compensation for length of service when his or her employment comes to an end. The Delegate stated in the Determination that Williamson's refusal of work in Surrey fell within one of the exemptions to section 63 which is contained in section 65(1)(f) of the *Act*. The exceptions to section 63 are set out as follows.

65 (1) Sections 63 and 64 do not apply to an employee

(a) employed under an arrangement by which

- (i) the employer may request the employee to come to work at any time for a temporary period, and
- (ii) the employee has the option of accepting or rejecting one or more of the temporary periods,

(b) employed for a definite term,

(c) employed for specific work to be completed in a period of up to 12 months,

(d) employed under an employment contract that is impossible to perform due to an unforeseeable event or circumstance other than receivership, action under section 427 of the Bank Act (Canada) or a proceeding under an insolvency Act,

(e) employed at a construction site by an employer whose principal business is construction, or

(f) **who has been offered and has refused reasonable alternative employment by the employer.**

Williamson argues that it is not reasonable for him to have to travel from Mission to Surrey for alternative work when the work assignments ended at the Mission Junction Mall.

Williamson's appeal letter states that Paladin offered him work in locations outside of Mission and in particular work in Surrey. Paladin indicated that he refused this work for

personal reasons. Williamson considered going to Surrey for work to be unreasonable because he did not have a vehicle at his disposal and public transportation did not have a direct route to Surrey.

Paladin had other employees who commuted to Surrey from Abbotsford and Chilliwack which are longer commuting distances than from Mission. Paladin has work in various locations. Williamson refused to consider any shifts outside of Mission. The only work with the employer in Mission was not available to him based on his performance.

Based on the information available to the Delegate I do not think the Determination was in error in finding that commuting from Mission to other locations in the Lower Mainland area was reasonable. The Determination was not in error in finding that no compensation was owed to the employee if the employment had ended.

CONCLUSION

1. With respect to the first basis of appeal there is no evidence to support the conclusion that Williamson was denied the opportunity to know the case he had to meet or the opportunity to be heard prior to the Determination being made. The investigative process complied with the rules of natural justice.
2. With respect to the status of Williamson's employment, Paladin continued to offer Williamson work after his shifts at the Mission Junction Mall ended. There was no new evidence to support a finding that the Director erred in concluding that Williamson's employment had not ended.
3. If the employment had ended then the issue was whether the work offered to Williamson was "reasonable alternative employment". There is no new evidence to suggest that the Director's Delegate erred in concluding that no compensation was owed.

Based on the evidence before me I do not find any error in the Determination. I deny the appeal.

ORDER

Pursuant to section 115 of the Act, I order that the Determination in this matter, dated October 19, 2000 be confirmed.

APRIL D. KATZ

**April D. Katz
Adjudicator
Employment Standards Tribunal**