

**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 -

Mary Williams-Middleman  
("Middleman")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Carol L. Roberts

**FILE NO.:** 96/131

**DATE OF DECISION:** May 14, 1996

## DECISION

### OVERVIEW

This is an appeal by Mary Elizabeth Williams-Middleman (“Middleman”), pursuant to Section 112 of the *Employment Standards Act* (“Act”), against a Determination of the Director of Employment Standards (“Director”) issued on December 11, 1995 (Determination #000379) where in the Director found that the employer had not contravened the *Employment Standards Act*. There were two components of the complaint and the complaint. The first relating to regular and overtime pay, was resolved between the complainant and the employer. The second aspect of the complaint, regarding misrepresentation of the conditions of employment, contrary to Section 8 on the *Act*, was dismissed by the Director. He found that there was insufficient proof to substantiate the allegations.

### FACTS

Mary Middleman (“Middleman”) was employed with Repworld from September 26, 1995 to October 10, 1995.

After her employment ended, Middleman filed a complaint alleging, among other things, that she had misled over the conditions of employment.

The Director found no evidence to prove her allegations. She found that Middleman’s own evidence supported a contrary finding, and in fact that her attempts to clarify her duties and responsibilities after employment began indicated that there was no firm agreement between the parties in this area.

### ISSUE TO BE DECIDED

The issue on appeal was whether Repworld induced Middleman to become an employee by misrepresenting the conditions of employment, contrary to Section 8 (d) of the *Act*.

### ANALYSIS

This appeal was by way of a written submission by Middleman. She contended that the Director erred in his determination in finding there was no misrepresentation. She argues, in her letter of appeal, that “...she does not agree with the determination of the Director as the Employer did state what would be offered.”

I have reviewed the documents provided by Middleman upon filing the appeal, the determination of the Director, and the letter of appeal in arriving at my decision.

On the basis of the evidence presented, I confirm the decision of the Director.

Section 8 of the *Act* provides that an Employer must not misrepresent the availability of a job or the terms and conditions of that job to a perspective employee.

No new evidence was submitted by Middleman. Having reviewed her evidence submitted to the Director at first instance, I am unable to infer from this that these two matters were discussed prior to Middleman's start date, and, accordingly, that there were misrepresentation in respect of them.

The Director's conclusion that there could be no misrepresentation, since these matter were still under discussion after employment commenced is an appropriate finding.

Middleman argues that it would not have been reasonable for her to leave a more secure, higher paying job to accept one with Repworld had the terms and conditions not been more attractive. While I agree that this would be a logical decision, the evidence does not support the Appellant's allegations.

I am unable to find that the Appellant has discharged the burden of establishing that the Director's decision was in error, and I deny the appeal.

**ORDER**

I Order, pursuant to Section 115 of the *Act*, that Determination #000379 be confirmed.

                  "Carol L. Roberts"  
**Carol L. Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**

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