

**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 -

Hall Pontiac Buick Ltd.  
("Hall")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 95/198

**DATE OF DECISION:** MAY 9. 1996

## DECISION

### OVERVIEW

This is an appeal by Hall Pontiac Buick Ltd. (“Hall”) under Section 112 of the Employment Standards *Act* (the “*Act*”) against Determination CDET# 001385. The Determination was issued by a delegate of the Director of Employment Standards on February 29, 1996 and finds that Hall owes wages to John Chopyk (“Chopyk”) for two reasons: terminating his employment without notice or just cause; and failing to pay him minimum daily hours.

I have completed my review of the written submissions made by Hall and the information provided by the Director’s delegate. I have concluded that the determination should be confirmed.

### FACTS

Chopyk was employed by Hall as a mechanic from May, 1994 to December 13, 1995. His hourly wage was \$21.50/hour.

In his complaint to the Employment Standards Branch, Chopyk alleged that he received less than 4 hours pay on three occasions when he worked (June 16, 1995; November 30, 1995; December 4, 1995). He also complains of being dismissed while not at work due to illness.

Hall’s appeal alleges that Chopyk’s employment was terminated for cause. It also alleges that Chopyk was not paid minimum daily hours on three occasions because “... he left early on his own or he was suspended for the day.”

#### *Minimum Daily Hours*

#### **June 16, 1995**

Chopyk’s complaint alleges that he was “...sent home for being unable to fill out forms.”

Chopyk was paid 0.6 hours for this day.

Hall’s submission to the Tribunal acknowledges that Chopyk did not complete his shift. However, the reason given by Hall is that Chopyk refused to “...do the paperwork that every mechanic is required to do” relating to warranty work. Bob Ward ( Asst. Service Manager) and Lorne Tremblay (Shop Foreman) spoke to

Chopyk about the issue. Ward told Chopyk to go home because he refused to complete the paperwork as requested by Tremblay.

**November 30, 1995:**

Chopyk was paid 2.5 hours on this day.

His complaint states only that he did not "...receive minimum day pay of 4 hours" for this day.

Hall's submission acknowledges that Chopyk worked 2.5 hours but that he "...decided on his own he would like to go home early and was allowed to do so."

**December 4, 1995:**

Chopyk complains that he was not paid for working on this day. He acknowledges that he was suspended for 3 days (December 4, 5, 6).

In Hall's submission, this was the first day of a 3-day unpaid suspension which it imposed on Chopyk due to his failure to properly install a clamp on a radiator hose. As a result: the hose came off; radiator fluid drained from the engine; the engine sustained considerable damage; and Hall replaced the engine at its expense.

*Liability resulting from length of service*

Chopyk's complaint alleges that his employment was terminated while he was absent from work due to illness. He states that his employer was informed of his illness on December 14, 1995 when he "...told Gary Walker to relay a message to Chuck Johnson" (Service Manager).

In its submission to the Tribunal, Hall argues that there was just cause to terminate Chopyk's employment based on several disciplinary warnings during his employment. Hall submitted four correction notices pertaining to Chopyk's unsatisfactory work record:

- May 16, 1995: Oil filter not installed after transmission service (R.O.# 41528).
- May 25, 1995: Refused to complete paperwork required by General Motors when a transmission is replaced and returned to manufacturer (R.O.# 41770).
- June 6, 1995: Steering wheel off center after alignment was completed (R.O.# 42117).

October 12, 1995: Clamp on lower radiator hose not tightened following water pump replacement (R.O.# 45589)

Each of these correction notices is signed by Johnsson and Tremblay. The space provided for the employee's signature is blank on each correction notice.

Chopyk says that he did not receive a copy of any of these notices. He also says that the only occasion on which he was informed of work deficiencies was at a staff meeting when management raised general issues of concern.

Chopyk was suspended, without pay, for 3 days (December 4, 5, 6, 1995) due to his unsatisfactory work performance involving a 1991 Buick Century which required a coolant flush. The correction notice dated December 1, 1995 (R.O.# 47011) identifies the deficiencies in Chopyk's work and the consequences of it ("blown head gaskets; #1 cylinder bore cracked; another engine had to be installed. According to Hall's submission, Chopyk denied any wrong doing related to this vehicle.

Chopyk worked his normal shifts on December 7, 8, 11, 12, 13 1995. He was asked to provide information which Hall required to file a claim with its insurers. Initially, Chopyk refused. He subsequently provided a written summary of the work he performed on the vehicle, but did not sign it. In an internal memo dated December 14, 1995 Chuck Johnsson stated that Chopyk's employment was terminated effective December 13, 1995 due to "...unsatisfactory work quality and performance."

## ANALYSIS

### *Minimum Daily Hours*

Section 34(2) (a) of the *Act* states:

An employee is entitled to be paid for a minimum of

(a) 4 hours at the regular wage, if the employee starts work unless the work is suspended for a reason completely beyond the employer's control, including unsuitable weather conditions, or

(b) 2 hours at the regular wage, in any other case unless the employee is unfit to work or fails to comply with the Industrial Health and Safety Regulation of the Workers' Compensation Board.

Thus the **only** circumstance under which an employer is not required to pay a minimum of 4 hours pay to an employee who has started work is when the work is suspended **for a reason completely beyond the employer's control**.

The circumstances which existed on: June 16, 1995; November 30, 1995 and December 4, 1995 were not completely beyond the employer's control. Chopyk was sent home by his employer on June 16, 1995. He was given permission to go home early on November 30, 1995. Hall suspended Chopyk for three days on December 4, 5, 6, 1995. All of these circumstances were within Hall's control. Thus, Hall is required to pay Chopyk 4 hours wages for each of these three days.

*Liability resulting from length of service*

Section 63 of the *Act* creates a liability for employers:

63. (1) After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week's wages as compensation for length of service.

(2) The employer's liability for compensation for length of service increases as follows:

(a) after 12 consecutive months of employment, to an amount equal to 2 weeks' wages;

(b) after 3 consecutive years of employment, to an amount equal to 3 weeks' wages plus one additional week's wages for each additional year of employment, to a maximum of 8 weeks' wages.

This liability is deemed to be discharged if an employee is given written notice or is dismissed for just cause[see Section 63(3)(c)].

The burden of proof for established that there is just cause rests with Hall, the employer. It is generally accepted in common law that for an employer to establish that there is just cause to dismiss an employee, it must meet the following test:

1. That reasonable standards of performance have been set and communicated to the employee;
2. That the employee was warned clearly that his/her continued employment was in jeopardy if such standards were not met;
3. That a reasonable period of time was given to the employee to meet such standards; and
4. That the employee did not meet those standards.

It is clear from the various “correction notices” that Hall did not find Chopyk’s work performance to be satisfactory. However, there is nothing in Hall’s submission to the Tribunal which shows that Chopyk was warned clearly that his continued failure to meet Hall’s performance standards would result in his employment being terminated.

The concept of “just cause” requires an employer to inform an employee, clearly and unequivocal, that his or her performance is unacceptable and that failure to meet the employer’s standards will result in their dismissal. The principal reason for requiring a clear and unequivocal warning is to avoid any misunderstanding, thereby giving an employee a false sense of security that their work performance is acceptable to the employer.

For these reasons I conclude that Hall has not demonstrated that Chopyk’s employment was terminated for just cause.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that Determination #CDET 001385 be confirmed.

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**Geoffrey Crampton**  
*Chair*  
**Employment Standards Tribunal**

JW:jel