

An appeal

- by -

Interior Flight Systems Ltd.  
("Interior Flight")

- 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:** Cindy J. Lombard

**FILE No.:** 2000/704

**DATE OF HEARING:** January 12, 2001

**DATE OF DECISION:** February 19, 2001

## DECISION

### APPEARANCES

For the Appellant, Interior Flight Systems Ltd.	Richard Enns, Counsel John Mitchell Tom Gobel
For the Respondent, Robert Grant	Robert Grant Mark Boach, representative

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Interior Flight Systems Ltd. (“Interior Flight”) of a Determination which was issued on September 19, 2000, finding that Interior Flight had dismissed the Respondent, Robert Grant (“Grant”) its employee, without reasonable notice, or compensation in lieu thereof, as required by Section 63 of the *Act*. The delegate of the Director determined that Grant was due \$1,687.97 being two weeks regular wages, vacation pay and interest.

### ISSUES TO BE DECIDED

Is Interior Flight liable to pay compensation in lieu of reasonable notice or is the employer Interior Flight excused from liability pursuant to Section 63 (3) (c) on the grounds that Grant quit his employment and therefore is not due reasonable notice or compensation in lieu of notice.

### FACTS

Grant commenced his employment with Interior Flight as an aircraft sheet metal technician at a rate of \$19.00 per hour on May 20, 1998. His last day of work was September 16, 1999. Interior Flight Craft says that it was a mutual agreement with Grant that he leave its employment. Grant says to the contrary that he was dismissed. Both parties are in agreement that no notice or compensation was given.

#### A. According to Flight Craft:

- 1) John Mitchell (‘Mitchell’)

John Mitchell, President of Interior Flight Systems says Grant’s work as a sheet metal worker was good during the term of his employment. In the few months prior to Grant leaving on September 16, 1999, Mitchell says that Grant asked at least three times whether there was any

possibility that he would be laid off and if so that he would appreciate as much notice as possible because Grant was a single parent with a mortgage and a truck payment.

Mitchell says that on September 16, 2000, he met with Grant and told him that there was a good chance that based on the company's present contracts that there would not be enough work and that a layoff was possible in approximately 4 to 5 weeks. According to Mitchell, Grant responded "Can I go now?" and said that he had a job to go to in Calgary. Mitchell says that he was stunned and while it caused difficulty for Mitchell because he did not have a replacement and skilled aviation sheet metal workers are hard to find, he agreed. Grant then got his tools and left.

Mitchell says that Grant returned on just one occasion to pick up his separation slip and last pay cheque.

2. Tom Gobel ("Gobel")

Mr. Gobel said that he is a welding foreman for Interior Flight Systems.

In his oral evidence, Gobel said that on September 16<sup>th</sup>, he spoke with Grant after his meeting with Mitchell. Gobel says that Grant appeared happy that he could get going to look for another job and said that he had a good prospect. Gobel was under the impression that Grant would not be returning.

**B. According to Grant**

Grant says that on September 16, 2000, at approximately 2:50 p.m. just after the last coffee break that Mitchell asked to speak with him. Mitchell told him that he was sorry but he was going to have to lay him off because they did not get three contracts from California to build planes that they had expected to. Further, he says that Mitchell told him that he was sorry because he understood that he was a single parent. He says that Grant did ask him about severance pay and he said, "you don't get any".

Grant says that he did not speak with Gobel that day and that he finished work and then went home. On the following Monday the 19<sup>th</sup>, Grant says that he went in to pick up his tools and separation slip.

**ANALYSIS**

The onus is on the employer, Interior Flight Systems, to show that the Determination was wrong. Section 63 of the *Act* states that an employer is liable to pay an employee compensation for length of service when discharged unless the employee:

*“(c) terminates the employment, retires from employment or is dismissed for just cause.”*

Furthermore, the onus is on the employer to show that an employee did quit. The test is both an objective and subjective one. Objectively, there must be a clear statement of an intention to quit and some subjective act inconsistent with his future employment such as to demonstrate a true and continuing intention to quit.

I have concluded based on the evidence that Interior Systems has not discharged its onus of showing that Grant quit and that the Determination is therefore wrong in its conclusion. Therefore, he is due compensation in lieu of notice as determined.

According to the evidence of Gobel and admitted by Grant, he had expressed some dissatisfaction with his pay at Interior Flight Systems and had made some inquiries with other employers including one in Calgary, however, Grant had no intention of quitting at the time he was let go.

It is likely that Mitchell did think that there was little risk in terminating Grant because he was aware that Grant had been making inquiries in Calgary and with the shortage of skilled workers that he would be hired right away by some else. Gobel gives credence to his expectation in his letter of August 21, 2000, where he says that Grant was “laid off” and that he expected to obtain work in Calgary.

Grant did not go to Calgary to look for work but eventually did obtain work in Edmonton in November, 2000.

Evidence consistent with a finding that Grant’s employment was expressly terminated or terminated by lay-off with no recall is as follows:

1. Grant’s Record of Employment issued by Interior Flight Systems on September 17, 2000, indicates that Grant was “laid off”. Six days later on September 23, 2000, the Record of Employment was reissued to read “quit”.
2. Grant was not contacted at any time after September 16, 2000, about returning to work at Interior Flight Systems.
3. It is unlikely that, as testified to by Grant, that in his financial circumstances i.e. a single parent with a mortgage, car payment, etc., would quit without another job to go to.

**ORDER**

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

***Cindy J. Lombard***

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**Cindy J. Lombard**  
**Adjudicator**  
**Employment Standards Tribunal**