

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 -

Rudolf Buchler
("the Complainant")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	Mark Thompson
FILE NO.:	96/696
DATE OF HEARING:	February 5, 1997
DATE OF DECISION:	February 20, 1997

DECISION

APPEARANCES

Rudolf Buchler	On his own behalf
Joachim Neuman	MTK Auto West Ltd.
Peter Sargent	MTK Auto West Ltd.

OVERVIEW

This is an appeal by Rudolf Buchler pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) against Determination No. CDET 004530 issued by a delegate of the Director of Employment Standards on November 1, 1996. The delegate found that MTK Auto West Ltd. did not contravene Section 63(2) of the *Act* in dismissing Mr. Buchler. Mr. Buchler appealed the Determination on November 20, 1996 on the grounds that he was entitled to length of service compensation under Section 63(2).

A hearing was held on February 5, 1997, at which time evidence was given under oath. Mr. Neuman and Mr. Sargent gave evidence for MTK Auto West . Mr. Buchler gave evidence for himself.

ISSUE TO BE DECIDED

The issue to be decided in this was whether MTK Auto West discharged Mr. Buchler for cause.

FACTS

The basic elements of Mr. Buchler’s employment relationship, i.e., his rate of pay and date of hire, were not in dispute. He was employed as an automotive technician. MTK Auto West, which is a dealer for BMW cars, dismissed Mr. Buchler for just cause on December 15, 1995 for irregularities with spare parts.

Mr. Sargent testified that on Saturday November 11, 1995, he was on call for the company’s roadside service. A customer did call, and he arranged to meet the customer in the service department. He examined the customer’s car and found a mechanical problem. Mr. Sargent then went into the shop to search for a clamp for a fuel line. He looked in two service bays without success and then went to Mr. Buchler’s bay. Mr. Buchler had a roller

tray that he used for storing personal items and a wall cabinet. Mr. Sargent looked in a container in the tray, lifted some shop rags and found fuel filters and micro filters. Mr. Sargent repaired the customer's vehicle and returned to the shop to investigate the items in Mr. Buchler's work area. He ultimately found three unopened bottles of windshield washer fluid concentrate, five unopened bottles of fuel injection additive, in the wall cabinet, as well two new fuel filters and three micro filters still sealed in their plastic wrappers in the personal tray. Mr. Sargent then searched the other technicians' work areas and found one who had a partially-empty bottle of fuel injection fluid. There were no other parts or supplies in their cabinets.

Mr. Buchler next scheduled day of work was November 21 (Monday November 13 was a statutory holiday). Mr. Sargent checked Mr. Buchler's tray morning and at the end of the day on each working day between November 14 and November 20. All of the items he found on November 11 were still in Mr. Buchler's tray. Mr. Sargent also checked the tray on November 21 before the start of the working day and found the items were in Mr. Buchler's tray. After the end of work on November 21, Mr. Buchler again inspected Mr. Buchler's work area and found that two of the three washer fluid bottles, two of the five fuel injection additive bottles were not in the personal tray and both of the fuel filters were no longer in the cabinet. The following day, November 22, Mr. Sargent checked Mr. Buchler's personal tray and wall cabinet. He found that all of the remaining items were gone--one bottle of washer fluid, three bottles of fuel injection fluid, and all four micro filters. Mr. Sargent also checked the garbage can outside the shop and did not find these items.

Mr. Sargent also instructed the parts manager to search the company's records for work orders assigned to Mr. Buchler on which micro filters were installed in October and November 1995. Several customers were contacted and asked to bring their cars to the shop to check for possible defects in the filters. One customer did not respond to the request to bring his car to the shop. However, of five customers who did come to the shop, three were found to have micro filters that were inconsistent with the differences in the usage of their cars. In one case, Mr. Buchler was to have replaced the filter, but was unable to gain access to it because the glove compartment was locked.

Mr. Sargent presented evidence on the method of payment for technicians by MTK Auto West. In effect, there is a standard time allotted to each job, and technicians are paid on that basis. Some technicians are able to finish their tasks more quickly and earn a bonus. Mr. Sargent pointed out that this system would reward a technician who failed to complete all tasks assigned in such a way that the customer would not be aware that the work had not been done.

Mr. Sargent and the controller of the company confronted Mr. Buchler with their findings, which did not include the check of the customers' cars at that time, and informed him that he was dismissed for cause on November 24, 1995. Mr. Buchler denied any wrongdoing, and there was a discussion about the service manuals in his possession. As he was leaving, Mr. Buchler threw a micro filter on a work bench and remarked that he could not be accused of stealing it.

In the appeal hearing, Mr. Buchler vigorously denied taking any parts or failing to perform work for which he had been paid. He stated that anyone in the shop had access to his personal tray and wall cabinet and could have placed the items in question there. Moreover, he did not own a BMW, so he had no reason to take parts. Mr. Buchler also asserted that he used a car pool to come to and from work and had no means of concealing an item as large as a micro filter (which is the size of a rather large book) when he left work at the end of the day. He pointed out that two of the work orders presented in evidence showed nothing irregular in his work. A third customer appears to have driven 13,000 kilometers between the installation of his micro filter and the check Mr. Sargent initiated, so the filter may well have been quite dirty. The work order for a fourth customer does not show that the filter was replaced. In the case of the fifth customer, the mileage on the car is not legible from the initial work order, although two months elapsed between the installation and the replacement of the micro filter.

ANALYSIS

This case turns on conflicts in evidence. Mr. Sargent had reasonable grounds to suspect that Mr. Buchler was removing parts from the company's premises improperly, and he took two steps to verify his suspicions: he checked Mr. Buchler's work area while he was away and again after he returned to work; and he arranged for several customers' cars to be examined. Under the circumstances, it is not surprising that management did not investigate alternative explanations for the evidence they found. In addition, Mr. Buchler was dismissed before the checks of clients' cars, although the written letter of dismissal followed the checks.

For his part, Mr. Buchler pointed out that other technicians had access to his work area, that there was no way for him to remove the micro filters without the compliance of two co-workers with whom he drove to and from work. Neither worker was called to testify. Furthermore, Mr. Buchler cast doubt on two of the inspections of customers' cars, one because of illegible mileage notations and a second because of apparently heavy usage of the vehicle between the service Mr. Buchler performed and the check Mr. Sargent ordered. In addition, the check found no fault in Mr. Buchler's work on two cars.

Both the complainant and MTK Auto West emphasized the importance of this case to their integrity. Mr. Sargent was especially concerned that the firm's clients received proper service for their vehicles. Mr. Buchler pointed out that he had worked for MTK Auto West for over seven years and was a successful technician, as shown by the bonus information provided by Mr. Sargent.

The cause offered by the employer for terminating Mr. Buchler is serious. After examining this evidence, I conclude on the balance of probabilities that MTK Auto West did not have just cause to discharge Mr. Buchler. The evidence regarding the removal of supplies from the work area was completely circumstantial. Nothing in the evidence explained how Mr. Buchler could have actually removed the items in question from the premises, and I was

left with some doubt about the allegation that Mr. Buchler did not install the filters as his work orders indicated.

ORDER

I order pursuant to Section 115 of the *Act* that Determination No. CDET 004530 be cancelled so that Mr. Buchler will receive the compensation appropriate for his length of service under Section 63(2) of the *Act*.

Mark Thompson
Adjudicator
Employment Standards Tribunal