

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 -

Biddlecombe Systems Ltd.
(the "Biddlecombe")

Of a Determination issued by

THE DIRECTOR OF EMPLOYMENT STANDARDS
(the "Director")

ADJUDICATOR: Jerry W. Brown

DATE OF DECISION: May 1, 1996

FILE NO: 95/053

DECISION

OVERVIEW

This is an appeal brought by Biddlecombe Systems Ltd. ("Biddlecombe"), pursuant to Section 112 of the *Employment Standards Act* (the "Act"), from Determination #CDET 000336 issued by the Director of Employment Standards (the "Director") on December 6, 1995. The Director determined that Biddlecombe owed Kenneth Tucker ("Tucker") \$4,880.00 as severance pay in lieu of notice. In this appeal, Biddlecombe claims that no compensation is owed to Tucker.

I have completed my review of the written submissions made by Biddlecombe and Tucker, and the information provided by the Director. I have concluded that Biddlecombe owes Tucker compensation in the amount calculated by the Director.

FACTS

Tucker began working for Biddlecombe in January, 1984 as a security systems salesperson/installer. His employment was terminated on May 12, 1995. Biddlecombe issued a Record of Employment ("ROE") on May 29, 1995 on which it entered code "A": "shortage of work", as the reason for issuing the ROE. Biddlecombe provided an amended or replacement ROE, also dated May 29, 1995. Biddlecombe also indicated that on the amended ROE, "shortage of work" was the reason for the termination of Tucker's employment. Biddlecombe had inserted written remarks in the comments section of the amended ROE. The initial ROE comments box was left blank. On June 13, 1995 Tucker filed his complaint. Thirteen weeks after the ROE was issued the layoff matured into a termination.

Biddlecombe provided documents it told the investigating officer had been misplaced during a restructuring that the employer claimed showed it had just cause for terminating Tucker. These included: letters from the Provincial Government advising Biddlecombe they would be required to terminate Tucker from Biddlecombe's security employee list but that they could convert his licence to sales only; letters from current employees that indicated that Tucker had told them he was quitting; as well there was documentation from the Ministry of the Attorney General, Security Programs Division, that indicated that Tucker should be terminated from Biddlecombe's list of security employees even though Biddlecombe acknowledges Tucker had not been installing alarms. Tucker's certification to install alarms had lapsed. Tucker had been installing and selling alarms during at least part of the period his certification was being questioned according to documents supplied by Biddlecombe.

ISSUES TO BE DECIDED

1. Was Tucker entitled to notice;
2. If yes, did he receive the proper notice;
3. Did Tucker quit; and
4. Did Biddlecombe have cause to terminate Tucker.

ARGUMENTS

Biddlecombe argues that it is not liable to pay compensation to Tucker because it was forced to terminate Tucker for cause because Tucker was not current with his certification. Biddlecombe also argues that Tucker had notice of his termination. Biddlecombe argues that in any event it is free from this liability because Tucker quit.

Tucker contends that the ROE clearly indicates he was laid off from work because of a shortage of work. He doesn't dispute he was not current with his qualifications but denies having seen many of the documents put forth by Biddlecombe. He points out that his signature is not on any of these documents. Tucker denies he quit.

ANALYSIS

Section 42 of the old *Employment Standards Act* (the "Old Act") provides that an employer is required to provide written notice or severance pay in lieu of notice when an employee is discharged. There is no argument that Tucker has been employed by Biddlecombe since 1984 and that Biddlecombe is required to give eight weeks written notice or severance pay in lieu of such notice, and that this was not done.

I am satisfied that Tucker was laid off as indicated by both ROE's. This action on the part of Biddlecombe suspended the working relationship and upon completion of the thirteen week lay-off within a twenty week period the temporary lay-off becomes permanent as of the day of the original lay-off, as per the *Old Act*.

Given this, there is no need to deal with the question of just cause as Tucker was laid off.

Notice or pay in lieu of notice is not required if an employee quits. Tucker denies he quit. Both ROE's, filled out by Biddlecombe, support Tucker's position that he did not quit. There is a code "E" available for employers to use when filling out the forms if an employee has quit. Biddlecombe failed to use this code on either ROE it completed. Biddlecombe's actions lend

support to Tucker's claim. The Biddlecombe employee letters in support of Biddlecombe's contention that Tucker quit, dated months after the event, do not sway my judgment on this matter. Finally, I am in agreement with the Director's delegate that both Records of Employment, prepared by Biddlecombe after the date of the alleged quitting and prepared without haste, clearly identify the termination as a lay-off due to a shortage of work.

ORDER

In summary, I order under Section 115 of the *Act*, that Determination #CDET 000336 be confirmed.

"Jerry Brown"

Jerry W. Brown
Adjudicator
Employment Standards Tribunal

EKB:96149