

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 -

(“Brian Jackman And Troy Collinge”)
operating PBM FINANCIAL SERVICES

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Barry Goff

FILE NO.: 96/153

DATE OF HEARING: May 6, 1996

DATE OF DECISION: May 17,1996

DECISION

APPEARANCES

Troy Collinge -for- PBM Financial Services
Adrian Rees -for- the Director of Employment Standards
Shannon Paulin

OVERVIEW

This is an appeal by PBM Financial Services (PBM) under Section 112 of the *Employment Standards Act* (the "Act"). PBM is appealing against Determination CDET# 001288 issued February 3, 1996. The Director determined that PBM owed Shannon Paulin wages and vacation pay of \$2,720.00. This figure represents the balance under the provisions of a written contract between the parties. PBM maintains the contract is not an original document and contends it did not agree to the terms of the contract.

ISSUES TO BE DECIDED

The issue to be decided in this appeal is whether the contract between the parties is genuine.

FACTS

On September 10, 1995, Paulin was interviewed by Brian Jackman, partner in PBM for the position of Business Manager to service five used car lots. Paulin stated that Jackman explained the position and told her that he would guarantee salary for the first month and a half of her employment and that he would like to hire her immediately. On the following day, Paulin received a call from Janice, a PBM employee who advised her that Jackman wanted her to meet Troy Collinge. Paulin met Collinge on September 11th, and they reviewed the business manager's job and what it entailed.

On September 13th, Paulin called Jackman from her workplace at WM Clark Ford Sales Ltd. and requested confirmation of the terms of her employment. Paulin stated that Jackman sent her by fax a signed contract (Exhibit 1) containing the terms of her employment which she signed and sent back by fax. Paulin asked for the written confirmation because she was

leaving a well-paid secure job to branch out into new territory. She called Jackman on receipt of the fax and he agreed to her additional request to pay for gas and road expenses. Paulin subsequently provided notice to her employer and started work for PBM on September 19th, 1995. Paulin stated that the terms and conditions of her employment were not modified but she only received \$1500 of the \$4000 provided in the contract.

Troy Collinge appeared on behalf of PBM. Collinge informed the Panel Mr. Jackman was unable to attend the hearing as he was called away on a family emergency. I note in passing that Mr. Jackman had previously requested and was granted an adjournment of the first hearing set for this appeal. Collinge advised the panel that Jackman had informed him he did not send or sign the contract earlier referred to as Exhibit 1. Asked by the director in cross examination whether Mr. Jackman had stated that it was a forgery Collinge replied Jackman had not told him that directly but that was obviously what he (Jackman) meant.

Collinge also stated that all contracts and cheques were signed jointly by Jackman and Collinge. In support of this position, Mr. Collinge noted the cheque to Paulin for \$1500 was signed by both Collinge and Jackman (Exhibit 2). Collinge further stated that there were no guaranteed salaries in the auto sales industry and employees in the auto sales industry work on commission only. Collinge further stated that it was a joint decision to hire Paulin but he could not recall whether he or Jackman had hired her directly. It was his understanding that she would work on a commission just as he and Jackman do.

Collinge admitted under cross-examination that Jackman's signatures on Exhibit 2 and the appeal application were very similar to the signature on Exhibit 1, the contract.

ARGUMENT

(1) For PBM

Collinge argued that Jackman had not signed Exhibit 1 and that all contracts let by PBM were signed jointly. Collinge said Paulin should have known that the PBM operation was a partnership and all documents required two signatures. Collinge stated that although the signatures on the appeal form and the cheque were similar to they were not the same as the signature on Exhibit 1, therefore the contract did not exist and was irrelevant. Collinge added that Paulin was working with PBM's customer accounts and decided to leave and take some of the accounts for herself. He alleged she had committed a breach of employee confidentiality. He also argued that Paulin went off to solicit PBM customers which undermined PBM's credibility with accounts it deals with.

(2) For Paulin

Paulin maintains that the document is genuine and that PBM owes the balance as set out in the determination by the Director.

ANALYSIS

Jackman did not appear before the panel and there was therefore no direct evidence on the central issue in this appeal. The result is that the panel is left with hearsay evidence from Mr. Collinge which cannot be used to rebut the direct evidence provided by Ms. Paulin in this case.

I found Paulin a credible witness. Her evidence in chief and in cross examination remained consistent with her complaint to the Employment Standards Branch and the information she provided during the investigation by the director's delegate. On the other hand, the written appeal by Jackman diverges markedly from the information PBM provided to the director's delegate.

I accept Mr. Collinge's evidence that in the car industry most people are employed on a commission basis. However, I find no reason to disbelieve Paulin's evidence that she needed and received a minimum guarantee of a month and a half before she would accept a new and very different position and leave her secure employment to do so. Collinge agreed in evidence that the business manager's position was a very unusual position in the car industry. This admission in itself supports the reasonable nature of Paulin's request for a written guarantee.

ORDER

Pursuant to Section 115 of the *Act*, I order that determination CDET# 001288 be confirmed in the amount of \$2720.

“Barry Goff”

Barry Goff
Adjudicator
Employment Standards Tribunal

BJG:sc