

**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 -

Dyer Electric Ltd.  
("Dyer")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** James E. Wolfgang

**FILE NO.:** 96/645

**DATE OF HEARING:** February 25, 1996

**DATE OF DECISION:** April 22, 1997

**DECISION**

**APPEARANCES**

Darwyn L. Henry	for the Employer
Rose Bokma	for herself
Ian MacNeill	for the Director

**OVERVIEW**

This is an appeal by Dyer Electric Ltd. (“Dyer”), pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against Determination No. CDET 004310. The Determination was issued by a delegate of the Director of Employment Standards (“the Director”) on October 11, 1996. The Determination found that Dyer had contravened the following Sections of the *Act*: Section 18(1) (payment of wages when an employee is terminated); Section 45 (statutory holiday pay); Section 63(1) (amount employer is liable to pay an individual terminated of employment); and Section 58(1) (vacation pay). The Determination required Dyer to pay to the Director the sum of \$244.52.

During the investigation by the delegate of the Director, Dyer had agreed that moneys were owing to Rose Bokma (“Bokma”) for wages, statutory holiday and vacation pay. He did not agree with any payment for length of service. He states however that he has paid all moneys in trust.

Dyer has a judgment against Bokma from Small Claims Court and was seeking to use the money owed to Bokma to off set his claim. There is further legal action contemplated by both Bokma and Dyer against each other.

A hearing was held on February 25, 1997, at which I took evidence under oath.

During the hearing Dyer stated that after consultation with his counsel he has decided that all matters are in dispute.

**ISSUE TO BE DECIDED**

Is Bokma entitled to wages, statutory holiday pay, vacation pay and compensation for length of service?

**FACTS**

Bokma was employed as an Office Manager by Dyer from April 10, 1996 to August 23, 1996. On occasion she also did some minor field work on construction sites.

Both parties agreed the working relationship had been stormy, to say the least. Bokma had at one time tendered a letter of resignation during an argument with Darwyn Henry (“Henry”). Subsequently, she requested that it be returned. On another similar occasion Bokma left or was fired only to have Henry request her to return to work.

Henry claims to have given Bokma a seven day written notice of layoff or reduced hours on August 21, 1996 (dated August 20, 1996). According to Henry, it was handed to her in the cab of the pickup. Bokma crumpled it up and threw it on the floor.

Bokma denies that she has seen the letter of August 20, 1996.

Henry states that on the morning of August 23, 1996 he went to an emergency service call leaving Bokma some office duties to perform. When he returned in the afternoon he inquired whether the office work had been completed. Bokma responded by saying “What’s it to you?” and “Do it yourself”. It was at this point that Bokma informed Henry she had an appointment with the Employment Standards Branch (“Branch”).

Henry claims he then telephoned the Branch. Bokma began shouting and threw her wallet at him. She then disconnected his call, and started to take her payroll records from the file. Henry indicates he offered Bokma copies of the records but refused to allow the originals out of the office. He does admit he physically tried to take the files from her. He states Bokma became more abusive so he sought help to remove her from the premises.

Bokma confirmed she had a 3:00 p.m. appointment with the Branch and indicates Henry told her if she went there, “Don’t bother coming back”. She denies that Henry offered her copies of her payroll records or that she tried to take the originals from the office. She further states that no one came into the office to remove her and, in fact, Henry physically attacked her so she left. She first went to the police to lay assault charges against Henry, then to her appointment with the Branch.

Henry does not recall threatening Bokma about going to the Branch.

On Bokma’s Complaint and Information Form she indicates she does not know whether she quit or was fired because of the confusion surrounding her departure from Dyer’s office.

Henry issued a Record of Employment Form on September 11, 1996 indicating Bokma had been dismissed and was not expected to return to work.

**ANALYSIS**

I believe Henry was issuing what he thought was notice of layoff or reduced hours of work to Bokma on August 21, 1996. This was supported by his statement that he was seeking part time employment for her with another firm. The events which followed may have caused Henry to change his position and it became a dismissal.

The letter states:

WITH PREJUDICE (sic)

August 20, 1996

Rose Bokma,

Please by (sic) advised by this letter, that we are hereby submitting 1 weeks notice of our firm's decision to either change your hours from full time to part time casual, or we may have to lay off some staff due to work shortage with our firm at this time.

We sincerely appreciate your past dedication, and all your efforts in managing our firm during the past months.

We wish you all the success in your future endeavours.(sic)  
(sic)

Effective Aug.-20, 1996  
to August 27, 1996  
4:30 p.m.

Darwyn L. Henry  
(Signed) D.L. Henry  
President

I do not believe the letter of August 20, 1996 meets the requirement of Section 63(a)(i) of the *Act*.

The letter suggests a change in the working relationship by altering the scheduled hours of work or it contemplates the layoff due to lack of work of some employees, not specifically Bokma. Neither in my opinion constitutes a "written notice of termination" as required by the *Act*.

Though Bokma claims she had not seen the letter I believe she was aware of it's contents, reference the appointment with the Branch two days later.

This leads me to the conclusion the parties have accepted the intent of the letter and have worked to that date. I do not intend to change that.

If there was doubt in Henry's mind of his intention when he gave Bokma the letter of August 20, 1996, it became clear in the Record of Employment of September 11, 1996 that Bokma had been dismissed and Henry did not intend to rehire her. This was 21 days after the above letter so emotions should have cooled, if they were a factor on August 23.

In the matter of the hours worked, statutory holiday pay and vacation pay, the quantum is not in dispute. Dyer had agreed at one point that the money was owing, however it was his intention to use that money to satisfy another judgment. That cannot be done. Section 18(1) of the *Act* states:

*An employer must pay all wages owing to an employee within 48 hours after the employer terminates the employment.*

Section 21(1) of the *Act* states:

*Except as permitted or required by this Act or any other enactment of British Columbia or Canada, an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose.*

There is no dispute that the hours on the time sheets were worked and are owing.

Payroll records indicate Bokma had an entitlement to the Statutory holiday claimed.

Vacation pay is also required to be paid.

The question of notice is in dispute because the letter is ambiguous. Is it a notice of reduced hours or a notice of layoff, and who is to be laid off?

Bokma felt by going to the Branch she would be terminated. Did Bokma quit before the expiration of the notice or was she terminated, requiring the payment of the remainder of the notice? The Record of Employment of September 11, 1996 points to the answer. When it was completed, Henry was still of the mind she had been dismissed not laid off or quit.

For all of these reasons, I do not intend to make any changes to the determination.

**ORDER**

I order, under Section 115 of the *Act*, that Determination No. CDET 004310 be confirmed.

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**James E. Wolfgang**  
**Adjudicator**  
**Employment Standards Tribunal**