

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1996, C.113

- by -

Tomco Wood Products Ltd.
("Tomco")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

Adjudicator: Hans Suhr

File No.: 98/079

Date of Decision: March 11, 1998

DECISION

OVERVIEW

This is an appeal by Tomco Wood Products Ltd. (“Tomco”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated January 16, 1998 issued by a delegate of the Director of Employment Standards (the “Director”). Tomco alleges that the delegate of the Director erred in the Determination by concluding that Tomco owed compensation for length of service in the amount of \$416.00 plus interest to a former employee, Allen Bousquet (“Bousquet”). The Director’s delegate concluded that Tomco had contravened Section 63 of the *Act*.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Tomco owes compensation for length of service to Bousquet?

FACTS

There is no dispute to the following facts:

- Bousquet worked for Tomco for a period in excess of three months;
- Tomco prepared a letter of termination on October 20, 1997;
- The termination letter indicates that October 24, 1997 would be Bousquet’s final day of employment.

Tomco states that Bousquet was terminated for “just cause” with respect to an incident of damage to company property which occurred on October 16, 1997. Tomco further states that they also considered repeated issues with Bousquet in regard to medical matters when their decision to terminate was made.

Bousquet states that the real reason that he was terminated was because he was on Worker’s Compensation as a result of a work related problem. Bousquet further states that he was never spoken to in regard to the alleged incident of damage to company property on October 16, 1997. Bousquet further states that his performance evaluation which was done August 13, 1997 makes no mentions of any problems with his attitude or work performance.

ANALYSIS

The liability on an employer to pay compensation for length of service is found in Section 63 (1)(2) of the *Act*, which provide:

- (1) *After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week's wages as compensation for length of service.*
- (2) *The employer's liability for compensation for length of service increases as follows:*
 - (a) *after 12 consecutive months of employment, to an amount equal to 2 weeks' wages;*
 - (b) *after 3 consecutive years of employment, to an amount equal to 3 weeks' wages plus one additional week's wages for each additional year of employment, to a maximum of 8 weeks' wages.*

The liability of an employer however, can be discharged pursuant to the provisions of Section 63 (3) of the *Act* which provides:

- (3) *The liability is deemed to be discharged if the employee*
 - (a) *is given written notice of termination as follows:*
 - (i) *one week's notice after 3 consecutive months of employment;*
 - (ii) *2 weeks' notice after 12 consecutive months of employment;*
 - (iii) *3 weeks' notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 weeks' notice;*
 - (b) *is given a combination of notice and money equivalent to the amount the employer is liable to pay, or*
 - (c) *terminates the employment, retires from employment, or is dismissed for just cause.*

Tomco issued a written notice of termination to Bousquet dated October 20, 1997 to be effective October 24, 1997. This written notice appears to provide Bousquet with the appropriate notice as required under the provisions of 63 (3) (a) (i), however, as Bousquet was on Worker's Compensation during the week of October 20 - 24, 1997 this notice **is of no effect** pursuant to the provisions of Section 67 (1) of the *Act* which provides:

(1) A notice given to an employee under this Part has no effect if

(a) the notice period coincides with a period during which the employee is on annual vacation, leave, strike or lockout or is unavailable for work due to a strike or lockout or medical reasons, or...

The sole remaining reason for the termination of Bousquet's employment is therefore the contention of Tomco that the incident of damage to company property on October 16, 1997 constitutes "just cause". There is no evidence that Bousquet was ever spoken to in regard to the incident of October 16, in fact, Bousquet did not work on October 17 and was off work on Worker's Compensation from October 20 - 24. The notes of S. Garagan (?) dated October 20, 1997 provided by Tomco indicate that "intentionally or not, Allen exerted enough force on the door to rip the door stop out of the wall." These notes also indicate that Allen (Bousquet) was observed "carelessly throwing around some tools". These notes were made 4 days after the incident and on the same day that the decision was made to terminate the employment of Bousquet. There is no evidence of any previous discipline on file with respect to Bousquet.

Tomco submits that the angry behaviour of Bousquet which resulted in damage to company property was serious enough to warrant termination of employment, yet they did not take any action until 4 days later when, coincidentally, Bousquet went off work on Worker's Compensation. Tomco did not discuss the damage incident with Bousquet at any time prior to deciding to terminate his employment.

For all of the above reasons, I conclude that Tomco has not established "just cause" for the termination of Bousquet. Tomco is therefore liable for the payment of compensation for length of service to Bousquet as calculated by the Director and set forth in the Determination.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated January 16, 1998 be confirmed in the amount of \$420.86 together with whatever further interest that may have accrued, pursuant to Section 88 of the *Act*, since the date of the issuance.

Hans Suhr
Adjudicator
Employment Standards Tribunal

/bls