

An appeal

- by -

Edward Vendromin
(the “employee”)

- of a Determination issued by -

The Director of Employment Standards
(the “Director”)

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

TRIBUNAL MEMBER: Sheldon Seigel

FILE No.: 2006A/102

DATE OF DECISION: October 27, 2006

DECISION

SUBMISSIONS

Edward Vendromin	on his own behalf
Tyler Grant, Manager, Employee Relations	on behalf of Convergys (the “employer”)
J. Ross Gould	on behalf of the Director

OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by the employee of a Determination that was issued on July 20, 2006 by a delegate of the Director of Employment Standards (the “Director”). The Determination found that the employer had acted reasonably in dismissing the employee for abandoning his job, and accordingly no pay for compensation for length of service (CLOS) was required. The Determination found that the employer had not contravened the *Act* in respect of the employment of the employee.
2. The Director determined that as there was no wages owed, there would be no further action taken.
3. The employee appealed, and submitted that the Director erred in law and failed to observe principles of natural justice in making the Determination.
4. An oral hearing was requested. The Tribunal reviewed the appeal and the materials submitted with it and decided an oral hearing was not necessary in order to decide this appeal.

ISSUE

5. The issues in this appeal are:
 - Did the Director err in law?
 - Did the Director fail to observe the principles of natural justice in making the Determination?

ARGUMENT

6. The employee submitted the following:
 - The Director demonstrated bias.
 - The Director misinterpreted the evidence: “[The Director] contorted the claim...They were not going to terminate my employment had I not applied for the transfer.”

- “[The Director] has fabricated a case for the employer based on documents submitted by them that we mutually agreed were not pertinent at the hearing.”
- The Director failed to consider relevant testimony in his Determination.
- “[The Director's] judgement was impaired by a third party or compromised by cognitive dysfunction.”
- Five commendation forms demonstrating competency and performance, which were received during the period of employment should be considered in this appeal.

7. The employer submitted that the employee’s claim is frivolous, and without merit. The employee was aware of the company procedures relating to leaves and transfers. He knew he was expected to return to work and knew the consequences of not so doing. There was no desire on the part of the employer to terminate the employee until he failed to return to work following his vacation.
8. The Director submitted that the employee’s unresolved disciplinary issues were found in the Determination to have been the employer’s rationale for denying the appellant’s transfer. The Determination also found that the employee had abandoned his job when he relocated to Ontario, and as a result, the employer was justified in dismissing the appellant without CLOS.
9. The Director further submitted that the employee failed in his appeal to cite a specific error in law or failure of the Director to observe the principles of natural justice.

THE FACTS AND ANALYSIS

10. The employee took an approved vacation and while on vacation, applied for a transfer to an Ontario division of the employer. The employee then moved to Ontario on the expectation that the application for transfer would be approved, notwithstanding that he had no such confirmation.
11. In considering the application for transfer, the employer considered the performance history of the employee. The employee had a history of contraventions of company policy and was subject to disciplinary action, and as a result the application for transfer was denied.
12. The employee failed to present for work at the end of his vacation, due to his move to Ontario. The employer terminated the employee for abandonment of his job and offered no CLOS as a result.
13. The employee sought a determination of entitlement to CLOS under the *Act*. The Director made a determination that the employer had acted reasonably in terminating the employee for abandoning his job, and no CLOS was required.
14. The employee appealed.

Did the Director err in law?

15. An error in law is usually described as a misapplication of the law by the decision-maker, acting without evidence, or deciding on a view of the facts which can not reasonably be entertained.

16. The employee provided no evidence that the Director erred in law. A review of the record and the Determination disclosed no obvious error in law. The answer to this question, is no.

Did the Director fail to observe the principles of natural justice in making the Determination?

17. The employee submitted that the Director demonstrated bias and impaired judgment, considered irrelevant evidence, and failed to consider relevant evidence.
18. The employee provided only rhetoric and no evidence to support these varied allegations. A review of the record and the Determination disclosed no evidence in support of any of these claims. The answer to this question, is no.

Is the addition of five commendation forms new evidence and does it affect the Determination?

19. The employee provided five forms that purport to recognize positive performance on the job. The employee submitted that three of the forms “are during the period of the claimed tran[s]gressions.”
20. These forms clearly indicate a degree of employer satisfaction with particular calls made from the call center in the course of the employee’s work. They do not address overall satisfaction with the employee inconsistent with the employer’s evidence of poor time management and late arrival to work. I find that these forms would not have affected the outcome of the Determination, had they been available to the Director at that time. Further, I find that these documents were within the control of the employee at the time of the process of determination and might have been utilized by the employee at that time had he so desired. Therefore they do not constitute new evidence.
21. The Appeal fails on all grounds.

ORDER

22. Pursuant to section 115 of the *Act*, I confirm the Determination.

Sheldon Seigel
Member
Employment Standards Tribunal