

An appeal

- by -

Wayne Fraese
("Fraese")

- 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

ADJUDICATOR: David B. Stevenson

FILE No.: 2003A/40

DATE OF DECISION: April 16, 2003

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by Wayne Fraese (“Fraese”) of a Determination of the Director of Employment Standards (the “Director”) dated December 30, 2002.

Fraese had filed a complaint with the Director alleging, among other things, that his employer, Eagle Ridge Pontiac Buick GMC Ltd. (“Eagle Ridge”), had terminated his employment without cause or notice, contrary to Section 63 of the *Act*, and he was therefore entitled to compensation for length of service. The other matters of complaint were settled. On the issue of compensation for length of service, the Determination concluded that Eagle Ridge had shown just cause to terminate his employment and, consequently, had discharged their liability under Section 63 of the *Act*. The Director ceased investigating and closed the file on the complaint.

In this appeal, Fraese has raised issues of entitlement to compensation for length of service, reimbursement for gas deductions and reimbursement for certain costs of doing business, which he says were charged back to him by Eagle Ridge. Fraese says that the Director erred in law, failed to observe principles of natural justice. On the Appeal Form, Fraese has indicated he wants the Tribunal to “collect the money due to me”, adding he had “so far received \$980 for statutory holiday pay & some gas & some charge backs”.

The Tribunal has decided that an oral hearing is not required in this matter. The appeal can be addressed through written submissions.

ISSUE

The issues in this appeal is whether Fraese has shown the Director erred in finding Eagle Ridge had shown just cause to terminate his employment and whether he is entitled to be reimbursed for gas deductions and costs of doing business.

FACTS

Eagle Ridge operates a retail car dealership. Fraese worked for Eagle Ridge from September 3, 1996 to June 25, 2001 as a commission sales person. He was terminated on June 25, 2001 for failing to meet reasonable performance standards set by his employer and clearly communicated to him.

During the investigation of the complaint, the Director was able to settle some matters between Fraese and Eagle Ridge. In responding to the appeal, the Director included a Settlement Agreement dated the 12th of December, 2002. That Agreement indicates that Fraese’s claims for reimbursement of wage deductions for “gas and other charge backs” was resolved by the payment of an amount of money to him.

ARGUMENT AND ANALYSIS

The burden is on Fraese to persuade the Tribunal that the Determination is wrong in some way that would justify the intervention of the Tribunal under Section 115 of the *Act*. (see *World Project Management Inc.*, BC EST #D134/97 (Reconsideration of BC EST #D325/96)). An appeal to the Tribunal is not a re-investigation of the complaint nor is it simply an opportunity to re-argue positions taken during the investigation. No new information has been provided to the Tribunal in this appeal.

I am not satisfied that Fraese has met the burden on him in this appeal.

I shall address the appeal in two parts. The first part will deal with the effect of the Settlement Agreement on the appeal and the second part will deal with the continuing claim for compensation for length of service.

In replying to the first part of the appeal, the Director says all issues raised in the complaint, except for the issue of compensation for length of service, were settled. The terms of the settlement were put into writing, signed by Fraese and a representative of Eagle Ridge and the amount of the settlement was paid to Fraese by Eagle Ridge. A copy of the Settlement Agreement was included in the reply. The Director says the Tribunal has no jurisdiction in respect of the Settlement Agreement. I agree with that assertion to a point. The Tribunal has no jurisdiction in respect of a Settlement Agreement, *simpliciter*; but it is wrong to suggest the Tribunal has no jurisdiction over a Settlement Agreement when, as here, the appeal challenges or seeks to reopen that agreement. The Director's assertion ignores that the validity of such an agreement is essential to the correctness of the Determination, as typically it forms the basis upon which the Director is able to avoid consideration of some aspects of the complaint and the application of Section 4 of the *Act*.

Notwithstanding, the above comments, the Tribunal has recognized that settling complaints is an integral aspect of the *Act*. In *Alnor Services Ltd.*, BC EST #D199/99, the Tribunal said:

The settlement of unpaid wage claims is an integral aspect of the *Act*, explicated by the provisions giving the Director specific statutory authority to negotiate settlement agreements and receive and disburse settlement funds. In my view, the entire scheme of the *Act* is undermined if bona fide settlements can be overridden simply because one party--with the benefit of hindsight--subsequently concludes that they made a bad (or at least not an optimal) bargain. If bona fide settlement agreements can be reopened even in the absence of misrepresentation, fraud, undue influence, duress or noncompliance with the agreement, then one has to wonder why any party would want to settle any dispute. In my view, a principle that discourages, rather than encourages, the timely settlement of unpaid wage disputes ought to be very closely scrutinized.

There is no indication in the appeal of any misrepresentation, fraud, undue influence, duress or non-compliance relative to the Settlement Agreement. Fraese has provided no reason why the Tribunal should override the Settlement Agreement and review his claim for reimbursement of gas deductions and other charge backs. Absent clear evidence justifying reopening or overriding the Settlement Agreement in order to correct an error in the Determination, the Tribunal has no difficulty rejecting this part of the appeal.

On the issue of compensation for length of service, Fraese does little more than quarrel with the result. No additional evidence or material was filed with the appeal. No errors in the findings or analysis of the Director were identified in the appeal. Fraese says the warning letters were not letters of dismissal or

notice in lieu of severance. I agree, but do not see how that affects their relevance to the issue of just cause. The warning letters speak for themselves. They are warnings to Fraese that his performance was unsatisfactory, setting standards of performance that had to be achieved over a specific period of time and indicating that his continued employment was in jeopardy if those standards were not met.

As noted above, it is not the function of the Tribunal to re-investigate the complaint nor is an appeal simply an opportunity to re-argue positions taken during the investigation. The evidence supports the conclusions made by the Director that a reasonable standard of performance was established and communicated to Fraese, that he was clearly warned that his continued employment was in jeopardy if he failed to meet the standards, that he was given a sufficient period of time to meet the standards and that he had demonstrated an inability or unwillingness to do so. The Director also considered, and rejected, whether Fraese was 'singled out' and whether Eagle Ridge had been inconsistent in the application of their performance standards.

The facts indicate that Fraese's failure to meet the performance standards set had undermined the employment relationship and effectively deprived his employer of its part of the bargain and, consequently, support the conclusion made by the Director that Eagle Ridge had just cause to terminate the employment.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated December 30, 2002 be confirmed.

David B. Stevenson
Adjudicator
Employment Standards Tribunal