

An appeal

- by -

Chamkaur S. Gill

- 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:** John M. Orr

**FILE No.:** 2003A/31

**DATE OF DECISION:** April 23, 2003

## DECISION

### OVERVIEW

This is an appeal by Chamkaur S. Gill (“Gill”) pursuant to Section 112 of the Employment Standards Act (the “Act”) from a Determination dated December 17, 2002 by the Director of Employment Standards (the “Director”).

In the exercise of its authority under section 107 of the *Act* the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

Gill was employed by S-304 Holdings Ltd. Operating as Jonker Nissan (“Jonker”) as an auto mechanic. When Jonker terminated his employment, Gill applied to the Director for compensation for length of service. The amount of compensation if liability was established was a little over \$9,000.00. There were some other issues that have since been resolved. Jonker claimed that the liability to pay compensation was deemed to be discharged because Gill was dismissed for just cause.

A delegate of the Director determined in favour of Jonker finding that there was just cause for dismissal and therefore no liability for compensation for length of service.

Gill has appealed from the determination on the basis that he was never given a fair chance to explain his case. He claims that the determination is full of incorrect findings and analysis.

### ISSUES

The issue in this case is whether Gill was given a reasonable opportunity to communicate his viewpoint to the Director’s delegate.

### FACTS AND ANALYSIS

The legislation provides that a person may file a complaint and that the Director must accept and review the complaint. The Director may assign a delegate to investigate the complaint and issue a determination. There are no provisions in the *Act* or regulations governing the extent or nature of the investigation. Section 77 of the *Act* provides that the Director must make reasonable efforts to give a person under investigation an opportunity to respond. This section does not apply to the complainant.

Jonker alleged that Gill was dismissed for just cause. They alleged that Gill had repaired a customers vehicle with a used part that he had previously removed from the employers property without consent. Gill charged the company for the used part and the customer was charged for a new part. Gill denies the allegations saying that he originally had permission to take the used part home some years earlier. He alleges that it was common practice at Jonker for mechanics to take these used parts and sell them back to Jonker. The customer would get a used part and Jonker would charge the warranty program for a new part.

The essence of the appeal is that Gill never had a face-to-face meeting with any delegate of the Director during the fairly lengthy period of the investigation. He claims that the delegate did not understand his point of view. Gill has provided fairly extensive submissions on this appeal. He submits that he had witnesses who would support his argument but claims they were not interviewed by the delegate. He requests that the matter be referred back to the Director so that he would have the chance to explain his case correctly.

The delegate notes that Gill provided extensive and detailed written submissions and she spoke to Gill on the telephone several times during the investigation. She submits that sometimes it is necessary to meet in person with one or both of the parties to a complaint but in this case she felt that Gill was well able to express his side of the story in his written submissions and in the several telephone conversations. In her discretion she decided that a personal meeting was not necessary given the good quality of the submissions and clarity of the phone conversations.

I have reviewed in detail the written submissions made by Gill on this appeal and compared those submissions to the information contained in the documents provided by the Director. It is apparent that the delegate considered all of the information. In my opinion nothing would be gained by sending the matter back to be reconsidered by the delegate. It is quite clear that the delegate considered and understood all of the submissions made by Gill. A face-to-face meeting would be redundant.

The Director's delegate conducted an investigation and was apprised of all of the necessary information to make her determination. The delegate applied the proper legal principles and came to a well-reasoned conclusion based on a thorough review of the information provided by the complainant. I am not persuaded that there is any factual basis or legal principle that would warrant any alteration of the determination. Accordingly, I conclude that the determination should be confirmed.

## **ORDER**

I order, under section 115 of the *Act*, that the determination dated December 17, 2002 is confirmed.

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**John M. Orr**  
**Adjudicator**  
**Employment Standards Tribunal**