



An appeal

- by -

Robert Compston

- 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: C.L. Roberts

FILE No.: 2005A/145

DATE OF DECISION: October 17, 2005

DECISION

SUBMISSIONS

Robert Compston	on his own behalf
Lynn Ranger	on behalf of the Director of Employment Standards
Lana Richardson	on behalf of Trolls Restaurant

OVERVIEW

1. This is an appeal by Robert Compston, pursuant to Section 112 of the *Employment Standards Act (Act)*, against a Determination of the Director of Employment Standards ("the Director") issued August 8, 2005.
2. Mr. Compston began working for 369266 B.C. Ltd. operating as Trolls Restaurant ("Trolls") as a cook on February 20, 2004. On March 20, 2004, he was promoted to assistant manager. His employment was terminated on July 5, 2004. On July 23, 2004, Mr. Compston filed a complaint with the Director of Employment Standards alleging that Trolls owed him regular wages, vacation pay and compensation for length of service.
3. On March 25, 2005, Trolls rehired Mr. Compston as a cook. His employment was terminated three days later. Mr. Compston filed a second complaint alleging that Trolls contravened section 67(b) of the Act, and claimed wages owed from his first termination date to his second termination date. The delegate spoke with Mr. Compston on April 26, 2005, at which time he advised her that his regular wages, vacation pay and compensation for length of service from his first period of employment had been paid. Trolls also provided evidence that all Mr. Compston's wages had been paid. However, Mr. Compston asserted the view that when Trolls rehired him in March, 2005, his employment should have been deemed continuous, and that he was entitled to wages from July 2004 until March 2005.
4. Following the hearing, the delegate determined that Trolls had not contravened the *Employment Standards Act*, and that Mr. Compston was not entitled to any additional wages. The delegate took no further steps on the two complaints.
5. Mr. Compston did not seek an oral hearing, and I am satisfied that this matter can be decided based on the written submissions of the parties.
6. Mr. Compston contends that the delegate erred in law and failed to observe the principles of natural justice. He seeks to have the Determination cancelled and "Criminal Charter Tort Charges for Ignorance of Law on BCGEU Member".

ISSUES

7. Did the delegate err in law in determining that Mr. Compston was not entitled to any further wages?
8. Did the delegate fail to observe the principles of natural justice?

FACTS

9. Before re-hiring Mr. Compston in March 2005, Trolls had him sign a document in which he agreed that the termination of his employment in July 2004 was due to his own actions, and that he had been paid all outstanding wages. Mr. Compston crossed out that portion of the letter that said his employment had been terminated for his own actions and signed the document. Mr. Compston claimed that he was terminated on March 28, 2005 because he was required to sign this document. Mr. Compston also submitted that the fact that Trolls re-hired him in March 2005 was evidence it had not fired him in July 2004, and contended that it owed him wages paid to other employees during that intervening period when he was available to work. He submitted that Trolls terminated his employment in 2004 due to his complaint to management that it had treated employees unlawfully.
10. Trolls contended that Mr. Compston's employment was terminated because on the two days on which he worked (March 26th and 27th) when he was specifically asked, near the end of his shift, to clean up his work station and leave, he continued to work. It submitted that Mr. Compston's employment was terminated for directly disobeying his supervisor, not because he refused to sign the document.
11. The delegate concluded that Trolls had discharged its liability to Mr. Compston under section 63 of the Act by paying him one week's wages, along with his regular wages, following his first period of employment. She determined that section 67(b) of the Act would only take effect if Mr. Compston continued to work after the written notice period had expired. As Mr. Compston was paid in lieu of notice, she determined that section 67(b) did not apply. She found that Mr. Compston's employment was not continuous between July 2004 and March 2005.
12. With respect to the second period of employment, the delegate determined that Trolls accepted Mr. Compston's altered letter because Mr. Compston began working the day he signed it. She therefore concluded that Trolls had not terminated Mr. Compston's employment because he altered the letter, contrary to Mr. Compston's assertions. She concluded that Trolls terminated his employment because he had disobeyed a direct order from his supervisor by continuing to work after he was told twice not to work overtime. She found that Mr. Compston's employment was terminated because he worked unauthorized overtime, and, because he had not worked more than three consecutive months, was not entitled to compensation for length of service.

ARGUMENT

13. Although Mr. Compston's submissions are somewhat difficult to discern, I infer that his position is that the delegate erred in finding that his employment was not continuous. As I understand his argument, his initial resignation or termination created a change in Trolls' employment policy so that it complied with the Act, and that, but for that initial complaint, his employment would have been continuous. Mr. Compston also made a number of other submissions which are either impossible to understand and irrelevant to this appeal. Those include references to the Young Offenders Act, Examinations for Discovery, Rules of Court, the Charter and references to the BCGEU. I have not considered those submissions.
14. The delegate submitted the record that was before the Director at the time of the Determination, and sought confirmation of the Determination.

15. Although Trolls indicated that it had not received the entire appeal package, it submitted that it was “comfortable” with the Determination.

ANALYSIS

16. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:

- (a) the director erred in law
- (b) the director failed to observe the principles of natural justice in making the determination;

...

17. The burden of establishing the grounds for an appeal rests with an Appellant

Errors of Law

18. Mr. Compston’s appeal documents appear to simply re-argue the matters he presented to the delegate. I infer that he says the delegate erred in her conclusion that his employment was not continuous between July 2004 and March 2005.
19. Section 67(1)(b) of the *Act* provides that a notice given to an employee under this Part [Part 8 – Termination of Employment] has no effect if the employment continues after the notice period ends.
20. There was no evidence before the delegate, and Mr. Compston provides none on appeal, that substantiates his allegation that his employment was continuous between July 2004 and March 2005. The evidence before the delegate was that Mr. Compston had been paid all outstanding wages owing as well as compensation for length of service after his employment was terminated in July, 2004, and he did not return to work. It also appears from Mr. Compston’s submissions that he was employed at the Boathouse Restaurant for some period of time after July 2004.
21. As I understand Mr. Compston’s position, he also contends that he was wrongfully terminated in July 2004. Section 63 of the Act provides that an employer must pay an employee compensation for length of service after three consecutive months of employment. Provided that Mr. Compston was paid compensation for length of service, which the evidence discloses that he was, the issue of whether he was wrongfully terminated does not arise.
22. I am also unable to conclude that the delegate erred in finding that Mr. Compston’s employment was not terminated for his failure to sign a document. The evidence is that Mr. Compston did sign the document (on March 25) although in an altered form, and worked for Trolls on March 26 and 27th. The delegate concluded that Mr. Compston’s employment was terminated for other reasons, and that that termination was justified. Mr. Compston apparently does not dispute the reasons his employment was terminated on March 27th.
23. I find no merit to this ground of appeal.

Natural Justice

24. Principles of natural justice are, in essence, procedural rights that ensure parties a right to be heard by an independent decision maker.
25. Parties alleging a denial of a fair hearing must provide some evidence in support of that allegation. (see *Dusty Investments Inc. dba Honda North BC EST #D043/99*)
26. Mr. Compston's appeal documents disclose no basis for this ground of appeal. Mr. Compston was given full opportunity to present his case and to respond to the employer's documentation. All of Mr. Compston's complaints were addressed fully by the delegate in the Determination.

ORDER

27. I Order, pursuant to Section 114 of the *Act*, that the Determination dated August 8, 2005, be confirmed.

C.L. Roberts
Member
Employment Standards Tribunal