

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act R.S.B.C. 1996, C.113

- by -

Canadian Corps of Commisionaires (Victoria and Vancouver Island)

(“ CCC ”)

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

ADJUDICATOR: C. L. Roberts

FILE No.: 2000/053

DATE OF HEARING: April 19, 2000

DATE OF DECISION: June 5, 2000

DECISION

APPEARANCES:

On behalf of the Canadian Corps of Commissionaires, (Victoria and Vancouver Island):

Marcia McNeil, Fuller, Pearlman, McNeil.

Pat Murphy, Director of Administration

Bernard Kadonoff, CEO

Roger McBride, Director of Finance

On behalf of the Director of Employment Standards:

Gerry Omstead

OVERVIEW

This is an appeal by Canadian Corps of Commissionaires (Victoria and Vancouver Island) ("CCC"), pursuant to Section 112 of the *Employment Standards Act* ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued January 10, 2000.

Kieth Fraser ("Fraser") complained that CCC failed to pay him wages for time spent taking security training and first aid re-qualification courses, and the cost of exams. The delegate determined that, while taking the courses, Fraser was being trained for the employer's business. The delegate found that CCC required Fraser to take training to renew his certificate because that was a condition of his employment, and was required to pay him for the time spent training for the renewal of that certificate.

Pursuant to Section 28 of the Act, the Director Ordered that CCC pay \$89.50 to the Director on behalf of Fraser for the time he spent training for first aid re-qualification. The delegate determined that the time Fraser spent taking security training was completed in excess in two years before the complaint was filed, and, pursuant to section 80 of the *Act*, no wage award would be issued.

ISSUES TO BE DECIDED

At issue on appeal is whether the Director's delegate erred in law in determining that

- 1) while taking courses offered by the CCC, Fraser was being trained for CCC's business; and
- 2) attendance at first aid re-qualification courses constitutes work for the purposes of the *Act*.

CCC also argues that that aspect of the decision relating to first aid course is contrary to a decision of another delegate issued July 30, 1999.

The delegate, after finding Fraser's complaint with respect to security licence training to be out of time, said "There is no reason that the employee or potential employee should not be paid for the time involved in training and the cost of writing the exams."

CCC acknowledged that the determination on Fraser's complaint with respect to security licence training is moot. CCC argued however, that, but for the timeliness of the complaint, the complaint would have been allowed, and sought a decision on the "correctness" of that aspect of the determination.

FACTS

Although the facts were not extensively set out in the delegate's decision, there was no dispute to the facts put before me, as they were also before the delegate. To put the issue in proper context, it is necessary to set those out in some detail

CCC is an incorporated, non profit society which provides employment only to former members of the RCMP or the Canadian Armed Forces.

To provide employment to its employees, CCC bids on a variety of contracts. Approximately 50% of its contracts are to provide security services to the federal government, although it also has municipal and provincial government and commercial contracts. Over 80% of the work is the provision of security services, although it also provides bylaw enforcement and other related services. CCC assigns its employees to sites on which CCC has been the successful bidder, including dockyards, government buildings and the Royal B.C. museum.

All of the federal government contracts require that security personnel meet the Federal Government Security Guard Standards and have first aid training to St. John Ambulance Emergency Level (a basic level training). Consequently, to successfully bid on federal government contracts, CCC's employees must hold those qualifications. This is not a requirement for other contracts, e.g. the City of Victoria.

The *Private Investigators and Securities Agencies Act*, R.S.B.C. 1996, c. 374 ("*PISA*") was enacted in 1995. It requires all companies carrying on a security business, and all persons engaged as security employees, to be licensed. Section 2(a) of *PISA* exempts CCC from sections 3 and 10 of the *PISA*. Those sections provide for a security business licence and security employee licence.

Notwithstanding the exemption from the licensing requirements, CCC has voluntarily agreed to meet *PISA* standards in order to meet its contractual requirements.

The Justice Institute of B.C. is, as I understand it, the only institution in B.C. accredited to offer security licence certification. The Justice Institute's basic standard training (BST I and II) is considered by the federal government to be equivalent to the federal security guard standards.

The CCC and the Justice Institute have an arrangement under which CCC delivers the training program on behalf of the Justice Institute. Some Commissionaires have been qualified to teach BST I and II courses. The examinations are administered by the Justice Institute.

The First Aid qualification standards are established by St John's Ambulance, and the certification renewal is a condition imposed by St. John's Ambulance.

After the enactment of *PISA*, between 1996 and 1998, all existing employees of CCC were trained to meet the BST II standard. CCC requires that all current applicants possess BST I and II qualifications as well as first aid training prior to being hired.

If an otherwise successful applicant does not have the security qualifications, they are told that they can take BST I and II through the CCC delivered training course. CCC contacts applicants and provides them with an opportunity to take the training at no cost other than the exam fees. Non CCC applicants may also take training through CCC. Those people must pay full training fees.

CCC uses the training course to assess the applicants, ranking them after the level I course is completed. CCC conducts a further assessment during the level II course. Applicants are only offered a position after those courses are completed successfully and they are otherwise seen as suitable applicant. At no time are applicants given any assurance they will be hired upon successful completion of the training.

Fraser was hired by CCC in 1987. He worked continuously until 1998, and was rehired in 1999. To maintain his employment, he was required to take security guard qualification courses and to renew his First Aid certificate. The BST I training involved some 40 hours, the BST II training 24 hours. The First Aid recertification took 8 hours.

The Director's delegate determined that any activity done for the benefit of an employer, or for the purpose of the employer's business, is considered to be work done by employees. He further determined that CCC could not require any employee, including Fraser, to obtain and maintain security guard qualifications and a valid First Aid certificate at their own expense.

The delegate found that there was no legal requirement that the employees of CCC successfully complete the security course to maintain their job, other than the fact it was made a condition of employment by CCC. Further, the delegate considered that it was of no benefit to an employee of CCC to take the course, since it was not personal - in other words, the security licence had to be surrendered upon ceasing employment. Accordingly, the delegate concluded that there was no reason that an employee should not be paid for the time involved in training or reimbursed for fee for writing the exam.

ARGUMENT

CCC contends that it is a term of employment for employees to take and maintain qualifications for a security guard and valid First Aid certificate. Further, CCC states that guard qualifications to the level required by security agencies legislation a valid First Aid certificate and eight hours of annual refresher training are *bona fide* occupational requirements for security guard employment in the CCC.

While CCC provides the training, it requires that employees, including Fraser, take the training in their own time and at their own expense.

CCC contends that requirements of the *PISA* are relevant. It argues that while the Commissionaires do not need to hold a licence in order to provide security services, the duties performed by CCC employees are the same as would be provided by other agencies that do require a licence. CCC further contends that persons taking training are not employees of CCC because they have no entitlement to employment as a result of taking the training. They have not been offered, nor do they have any guarantee they will be offered employment as a result of taking the training. All they are guaranteed is the potential of employment.

CCC argues that these credentials are a condition of employment, and that they were necessary for an employee to maintain his/her job. It says that BST I and II training are minimum qualifications, and that applicants with these qualifications are not, without more, sufficient to be offered employment.

CCC also contends that it is irrelevant whether or not CCC employees are legally required to acquire

BST training. It contends that the *Act* does not distinguish between qualifications required by an employer which are mandated by law and those which are not. It argues that the fact that CCC makes these qualifications a condition of employment has no bearing on whether a person is an employee or not, and whether the training is a legal requirement or not is irrelevant to determination of whether an individual is an employee.

CCC further argues that the decision of the delegate conflicts with a decision of delegate Molnar, issued July 30, 1999. In that decision, the delegate investigated a complaint by an employee of CCC regarding non payment of wages while participating in a first aid course, contrary to section 21(2) of the *Act*. The facts of that complaint were identical to those before me. The complainant participated in a basic first aid course at his own expense, and received no wages for doing so. The complainant contended that he was under the direction of CCC to participate, and that he ought to be paid for doing so. CCC contended that the first aid course was a prerequisite of employment, and the responsibility of maintaining that qualification is not the employer's responsibility. The delegate concluded as follows:

If training is provided by an employer for the purpose of educating employees to perform specific employment duties or tasks unique to the employer's needs, the training is considered work and attracts wages. Conversely, if the training is to obtain or maintain a permit, licence, certificate or ticket which allows that holder to seek employment with any number of employers, the activity is not considered work and does not compel the payment of wages.

The delegate concluded that first aid credentials were generic, and required by a number of employers, and that the CCC had the right to require its employees to have and maintain that credential at employee expense.

ANALYSIS AND DECISION

Security licence training

Fraser's complaint in respect of the security licence training was filed in excess of two years after the training was completed. Consequently, as noted by the CCC, the determination on this issue is moot.

The facts before me appear to be similar to those in *City (Surrey) v. Director of Employment Standards* B.C.E.S.T. D411/97. In that case, the Tribunal found that, while firefighters were in training, they were being trained by Surrey for Surrey's business. However, this case was not argued by either party, nor was there a full exploration of all of the facts and issues. There was no evidence before me on the admissions process for example, which would be a key factor in attempting to distinguish this case from that in *Surrey*.

I decline to make a decision on the "correctness" of the delegate's determination in this respect, as, even though it may have application to other employees in Fraser's situation, all would be similarly out of time.

First Aid training

Section 21(2) of the *Act* provides that an employer must not require an employee to pay any of the employer's business costs except as permitted by the regulations.

CCC is in the business of providing security services. It could not successfully bid on federal government contracts, which forms the bulk of its work, unless it could supply personnel who hold basic St. John's Ambulance qualifications. It is a benefit to CCC's business to have employees with current first aid certificates. I find that the time Fraser spent training to renew his certificate is CCC's business cost. CCC cannot require Fraser to pay those costs.

ORDER

I Order, pursuant to Section 115 of the Act, that the Determination, dated January 10, 2000, be confirmed, together with whatever interest may have accrued since that date.

C. L. Roberts
Adjudicator
Employment Standards Tribunal