Employment Standards TRIBUNAL

An appeal

- by -

Bruce Deacon operating Quesnel Lake Lodge
("Deacon")

- 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.: 2000/864

DATE OF HEARING: March 29, 2001

DATE OF DECISION: April 11, 2001

DECISION

APPEARANCES:

on behalf of Bruce Deacon operating Quesnel Lake Lodge	Bruce Deacon
on behalf of the individual	Norma Nohels

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the *"Act"*) brought by Bruce Deacon operating Quesnel Lake Lodge ("Deacon") of a Determination that was issued on December 1, 2000 by a delegate of the Director of Employment Standards (the "delegate"). The Determination concluded that Deacon had contravened Part 8, Section 63 of the *Act* in respect of the employment of Norma Nohels ("Nohels") and ordered Deacon to cease contravening and to comply with the *Act* and to pay an amount of $1,330.16.

Deacon says the Determination is wrong because Nohels was not terminated, but quit her employment.

ISSUE

The issue raised in the appeal is whether Deacon has shown the Determination was wrong.

THE FACTS

Nohels worked at Quesnel Lake Lodge in Likely, B.C. as a barmaid from May 16, 1995 to May 23, 2000. She alleged she was terminated from her employment with Deacon on the latter date without notice, or pay in lieu of notice, and without just cause. Deacon said Nohels had quit. The dispute between the employer and the complainant was joined on that single point. The events relevant to the matter in dispute occurred on and around May 23, 2000.

The appeal raised several factual disagreements with parts of the Determination and with some of the assertions made in submissions to the Director during the investigation that were quite clearly unrelated to the matter in dispute. I indicated to the parties at the hearing that the only findings of fact with which they needed to be concerned were contained in and related to the following statement in the Determination:

> I find that Nohels did not quit her employment and therefore in the absence of written notice she is entitled to 5 weeks compensation for length of service.

For the most part, the parties focussed their evidence and their attention on matters that were relevant to the appeal and I commend them for that. On the matter in dispute, the evidence presented during the hearing, which consisted of testimony from Nohels and Deacon, was consistent with the information given by Nohels to the Director in her complaint.

ARGUMENT AND ANALYSIS

Deacon, as the appellant, has the burden in this appeal of persuading the Tribunal that the Determination was wrong, in law, in fact or in some manner of mixed law and fact. He has failed to meet that burden.

In its analysis, the Determination reached the following conclusions about the evidence:

> The evidence gathered throughout the investigation suggests that the Employer stated that he intended to lay Nohels off and since she did not argue he assumed she quit. The evidence does not suggest that Nohels intended to quit, nor does it suggest that she refused to work. Based on the evidence provided [I] can not find that Nohels refused employment and therefore quit.

The above statement contains the relevant findings on the complaint for the purpose of this appeal. Consequently, to reiterate, disagreements about whether Nohels chose her own hours of work or was required to work every weekend; whether she did or did not agree with or participate in a reduction in her hours of work in the past; and whether other persons did or did not find Deacon to have been a difficult employer are not particularly helpful in deciding whether Nohels was terminated from or quit her employment on or about May 23, 2000. Those matters do not need to be answered and, accordingly, I have not.

On the matter in dispute, nothing I heard in the evidence persuaded me there was any error in the conclusions of fact upon which the Determination was based. More significantly, and as indicated above, the totality of the evidence was consistent with complainant's version of the discussion that took place on May 23, 2000 and clearly justified the conclusion that Nohels had not formed any intention of quitting her employment nor had she wilfully and deliberately undermined the employment relationship by refusing to work.

The Determination referred to and relied on comments made by the Tribunal in *Re Burnaby Select Taxi Ltd.*, BC EST #D091/96 and *Re Lil' Putian's Children's Fashions Ltd.*, BC EST #D320/97. In the circumstances, the principles expressed in those decisions were correctly applied.

As Deacon has not shown any error in the Determination, the appeal must be dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination, ER#: 090-552, dated December 1, 2000, in the amount of $1,330.16, be confirmed, together with any interest that has accrued pursuant to Section 88 of the *Act*.

DAVID B. STEVENSON

David B. Stevenson
Adjudicator
Employment Standards Tribunal