

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

Brian McLean Geo Oldsmobile Ltd.
("McLean")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: James E. Wolfgang

FILE NO: 96/262

DATE OF DECISION: July 2, 1996

DECISION

APPEARANCES

Brian McLean		In person
William MacDonald	on behalf of	Brian McLean Chevrolet Geo Oldsmobile Ltd.
Douglas Griffiths		In person
Robert Morrison	on behalf of	Director of Employment Standards

OVERVIEW

This is an appeal by Brian McLean Chevrolet Geo Oldsmobile Ltd. (“McLean”), under Section 112 of the *Employment Standards Act* (the “Act”), against Determination No. CDET 001733 issued by a delegate of the Director of Employment Standards on March 25, 1996. In this appeal McLean seeks to set aside the Determination and argues that the amount owing is zero.

ISSUE TO BE DECIDED

Does McLean owe Douglas Griffiths (“Griffiths”) any severance pay and, if so, how much?

FACTS

Griffiths was employed as a salesperson by McLean from October, 1992 to July 21, 1995.

It is a practise of the Company to provide sales employees with a company vehicle.

Regular meetings are held with sales personnel and management to discuss sales strategies. On weeks when sales were very good, management provided beer and pizza for the sales staff.

Griffiths was observed at a company-sponsored event under the influence of alcohol. Fellow employees took away Griffiths’ keys to prevent him from driving. Brian McLean was made aware of this situation and held a meeting with Griffiths the following morning to discuss his conduct. No minutes were kept and no written warning was issued.

Approximately three weeks later, on his day off, Griffiths was involved in a serious motor vehicle accident while driving his company car. Following a police investigation, Griffiths was charged with impaired driving. McLean fired Griffiths, claiming he had violated the Company rule in respect to drinking and driving.

The Determination found Griffiths was dismissed without just cause and awarded him \$3,208.11.

ANALYSIS

During the disclosure of the facts, a number of procedural issues were raised pertaining to the role of the director's delegate [*cf.* **BWI Business World Inc. BC EST #D050/96**], the admissibility of new evidence, the number of witnesses and the nature of their evidence. During the various exchanges, the parties began to seek a resolution to the appeal. The Director's delegate was of considerable assistance to the parties in reaching a settlement.

The matter was resolved by agreement, pending the exchange of formal documents. Upon receipt of those documents, Griffiths agreed to withdraw his complaint and McLean agreed to withdraw its appeal.

ORDER

I order, pursuant to Section 115 of the *Act*, that the Determination be cancelled upon execution of the parties' settlement agreement

James E. Wolfgang
Adjudicator
Employment Standards Tribunal