

**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 -

Casino Tropical Plants Ltd.  
("Casino")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE NOS.:** 1999/65

**DATE OF HEARING:** April 9, 1999

**DATE OF DECISION:** May 11, 1999

**DECISION**

**APPEARANCES**

For Casino Tropical Plants Ltd.	Rolf Ingold, Casino's owner
	Arlene Chang
	Pamela George
	M. Paul VanKempen
Spokesperson for the employees	Narinder Gill
Appearing on his own behalf	Parminder S. Panaich
Appearing as a witness	Charanjit Singh
Appearing as a witness	Sukhwinder S. Badh
Interpreter	Manjit Arneja

**OVERVIEW**

Casino Tropical Plants Ltd. ("Casino" or, "the employer") appeals a Determination by a delegate of the Director of Employment Standards which is dated January 15, 1999. The appeal is pursuant to section 112 of the *Employment Standards Act* (the "Act").

The Determination orders the payment of compensation for length of service and other moneys to Sukhwinder S. Badh, Sarbjit K. Dhaliwal, Narinder (Nick) S. Gill, Parminder K. Khangura, Parminder S. Panaich, Gurpreet K. Sandhu, and Charanjit Singh. Casino appeals the order to pay compensation for length of service and in that regard it claims that the employees terminated their employment.

The delegate considered whether the employees might have quit and was not convinced of it. She found that Casino hired a new crew and it unlikely that Singh, the manager, would act to terminate Badh and Panaich, as the employer alleges, and then proceed to quit his employment over their termination.

Casino, on appeal, says that it hired a second crew, it did not replace the first crew. I am told that it has no idea why Singh quit, or anyone else, but that is what the employees did. Casino says that it is simply absurd to think that it would fire its manager, its only truck driver and all of the other workers in the busiest part of the year. As Casino presents matters to me, the employees arrived for work on a Monday morning and demanded a meeting with Rolf Ingold, Casino's owner. Ingold told them to book appointments. Gill asked for the appointments and, that done, the employees headed for their cars. On being asked if they were leaving, they

announced that they were quitting. The next day Gill telephoned to say that the employees wanted their final pay cheques.

The employees jointly complain of Casino as an employer but they deny that they quit. In respect to events leading up to their termination, they say that Casino went out and hired a new crew when some of them refused to start at 8 o'clock one morning. Casino then stopped giving the old crew work. They were told by Singh that they were to report for work on the following Monday but again Casino gave them nothing to do. They waited for Ingold on the expectation that he would tell them what they were to do for the day. After waiting an hour, Ingold appeared and Gill asked "what was going on". Ingold would not talk to them at that point but said that they should book appointments to see him and "go home and have a nice day". Gill asked for appointments, just as Ingold wanted, and the employees went home with the expectation that Casino would advise them of their appointments later in the day. Instead, Casino never arranged the appointments, nor called them back to work.

Gill, in his testimony, departs from the above in two important respects. As he presents matters, he asked for a meeting with Ingold for two reasons, to find out why Panaich and Badh were being terminated, and to find out why Casino was not providing the regular crew of workers with work. Beyond that he tells me that employees refused to work on Monday after Ingold refused to meet with them as requested.

Singh has little to say regarding his own termination. He was absent for most of the hearing. It was not until I returned from a break for lunch, at approximately 1:30 p.m., that I was introduced to Singh and Badh. As I was at that point just in the process of hearing from the employees, I was still able to provide Singh with an opportunity to present his side of matters. He spoke extensively about the events that led to his crew's termination but, in regard to the circumstances of his own termination, he says only that he too was fired on the 27<sup>th</sup>.

## **ISSUES TO BE DECIDED**

The facts of this case are in dispute.

The matter of whether or not each of the employees quit his or her employment is at issue.

## **FACTS**

Casino is a wholesale nursery and blueberry farm. Ingold has divided his business into four parts, the four being tropical plants, tropical plant crops, nursery plants and blueberry production.

Each division of Casino has what is called a “manager”. Charanjit Singh was manager of the blueberry operation. According to Casino, Singh was responsible for all aspects of running Casino’s 60 acre farm but greenhouse operations and its office. I find that Singh received instructions from Ingold, on an almost daily basis, and that it was his job to translate those instructions and provide employees with immediate control and direction.

Badh, Dhaliwal, Khangura, Panaich, and Sandhu were all under Singh’s direction. They were all full-time employees whose job it was to tend fields and, at harvest time, sort and pack blueberries for the fresh fruit market.

Nick Gill was employed as a truck driver. He reported to Ingold and VanKempen. He worked largely on his own as his job very often took him away from Casino, to points as far away as Seattle.

Casino had begun harvesting its early blueberries when the terminations occurred. Once the harvest has begun, Casino expects its employees to work long hours and sometimes on weekends. The employees were doing that. And on the days when there were blueberries to sort and pack, Singh and the employees under his direction were starting work in the afternoon instead of 8:00 a.m., the usual time that they started work. It was Singh that would advise his crew of when they were to start work on any particular day.

Singh was unhappy with the work of Badh and Panaich who he saw as both unproductive and uncooperative. On the 20<sup>th</sup> of July, 1998, he spoke to Ingold about that. Ingold and Paul VanKempen, Casino’s Controller, tell me that Singh then decided that he should fire the men. VanKempen states that Singh asked him to type up what was required in the way of notice of termination. Singh denies doing that. He claims to have asked for nothing more than the preparation of written warnings. Whatever is the truth of the matter, it is not something that I must determine for the purpose of this appeal. It does not matter why Badh and Panaich were served with written notice of termination, but only whether they were and, if so, when notice of termination was delivered to the men.

The delegate has found that both Badh and Panaich received written notice of termination and, while that might have been on the 20<sup>th</sup>, the 21<sup>st</sup> or the 22<sup>nd</sup> of July, it was most likely on the 22<sup>nd</sup>. Casino claims that the delegate is wrong on the date but it does not submit evidence which shows that. I, therefore, accept the delegate’s finding that it was on the 22<sup>nd</sup> that Badh and Panaich received notice of termination.

Ingold had something of a crisis on his hands on the 22<sup>nd</sup>. He knew that it was of critical importance, if Casino was to sell its fruit for the highest prices, that it demonstrate to grocers that they could depend on Casino as a source of blueberries that summer. And Casino at that point had received orders from three different grocers for blueberries (not one as set out in the Determination) and all were to be ready at almost the same time, the last by noon on the 23<sup>rd</sup> of

July. Yet the sorting and packing of the blueberries was proceeding so slowly that it was looking like Casino might not have all three of the orders ready on time.

Badh, Dhaliwal, Khangura, Panaich, and Sandhu (the “regular crew”) had begun work on the 22<sup>nd</sup> when, first Singh, and then Ingold, spoke to them about Casino’s problem. They were told that either they would have to stay until the work was done, or work into the night of the 22<sup>nd</sup> and then come in at 8:00 a.m. on the 23<sup>rd</sup> for the purpose of finishing the orders, or Casino would hire a second crew. According to the employees, Ingold went so far as to demand that they come in at 8 o’clock or “not bother coming back” because he would hire a new crew. VanKempen, in a letter to the delegate dated September 16, 1998, suggests that Ingold merely threatened reduced hours if Casino was forced to hire a second crew. Whatever was said, and it is not something that I have any way to determine, it is clear that Casino, in the evening of the 22<sup>nd</sup>, did hire another crew (the “new crew”). The regular crew worked into the night of the 22<sup>nd</sup> and completed the largest of the orders, that for Associated Grocers, at 2:30 a.m. on the 23<sup>rd</sup>. That was the last of their work for Casino.

At 8:00 a.m. on the 23<sup>rd</sup>, the new crew reported for work. Singh trained them in the sorting and packing of blueberries. It was that crew that sorted and packed blueberries for the two remaining orders, one for Thrifty Foods of Victoria, and the other for General Fruit, also of Victoria. But members of the new crew could not work past 4:30 p.m.

Whether it was two of the workers (as Gill remembers) or three (as Casino states it was), some of the workers left and Casino had to hire replacements. It fell to Gill to do that. He suggested to Ingold that he just call in members of the regular crew. Ingold told him not to do that but find new workers. And that is what Gill did.

Gill made a number of deliveries on the 23<sup>rd</sup>. They included delivery of the order by Associated Grocers. That was to Seattle. Gill also worked Friday, the 24<sup>th</sup>, but he had both Saturday and Sunday off.

In addition to working on the 23<sup>rd</sup>, Singh worked the 24<sup>th</sup> and the 25<sup>th</sup>. He had Sunday off.

Ingold recalls speaking to Singh on the 25<sup>th</sup> and telling him that he wanted the regular crew to weed a south field on Monday. Singh does not remember being told to weed fields but he does remember that Ingold told him, on that Saturday, to bring in the regular crew for work on Monday. I find, on the basis of the above, that the regular crew was told to report for work on Monday. That is despite the fact that VanKempen, in his letter of the 16<sup>th</sup> of September, 1998, states that Singh, on the Saturday, “did not speak to Rolf at all” even though Ingold “was around all day”. I find that, most likely, VanKempen is simply wrong on what he reports. He comes by his information second hand.

Gill, Singh and the regular crew reported for work at 8:00 in the morning of the 27<sup>th</sup>. But no one started work at that point. Gill tells me that the employees refused to work but that is not

what Singh and the regular crew say. I accept that Gill refused to work that day. But beyond that I find that the regular crew did not refuse to work, it is simply that they were given no work to do by Casino. Before the regular crew could refuse to work, they had to be assigned work, and Singh, whose job it was to relay Ingold's instructions with respect to work, tells me that he never gave the crew work to do that day. And no one else claims to have assigned work directly to the crew.

Ingold was out tending to Casino's irrigation system when the employees reported for work. It was not until sometime around 9 in the morning that he made his way to Casino's office. There he found the employees waiting for him.

On spotting Ingold, Gill shouted, from a distance of about 50 feet, that the employees wanted a meeting and to know what was going on. Ingold said that he would not meet with them at that point but that they should book appointments, individual appointments. Nowhere in Casino's submissions is it suggested that Ingold, at this point, told the employees to get to work, or that he told them what it was that they were to do. The evidence is that the employees left almost immediately. Singh and the regular crew allege that Ingold told them "to go home and have a nice day". That is denied by Casino. I find that it is either that the regular crew left because they were told to go home or it is that they left because they really had no reason to stay, no work having been assigned to them. Nothing else appears likely.

Before he left, Gill went to see Pamela George, Casino's secretary, about arranging appointments as Ingold had requested. Gill let it be known that the employees would expect to be told of their appointments by telephone.

As the employees headed for their cars, Arlene Chang noticed that they were all leaving. Chang asked if they were leaving. It is alleged by Casino that she also asked Gill "if he knew that, if they left, that meant that they were quitting", to quote Casino. Casino claims that he answered in the affirmative but that is not shown to me. Gill denies that he said anything about quitting. I find that it is not suggested, never mind shown, that Singh or any member of the regular crew announced that they were quitting their employment, or said anything like that.

Casino did not arrange any of the appointments that Gill had requested. Casino tells me that was because Chang said that they had all quit.

None of the regular crew was told to report for work on Tuesday. That day was a regular work day for both Gill and Singh but neither of them reported for work. Gill, on that Tuesday, telephoned and said that the employees all wanted their final pay cheques.

## **ANALYSIS**

What I must decide is whether or not the appellant has met the burden for persuading the Tribunal that the Determination ought to be varied or cancelled for reason of an error in fact or in law.

It is section 63 of the *Act* that provides for and governs the liability to pay compensation for length of service. Sub-sections 1, 2, and 3 are of particular importance in this case. They are as follows:

- 63** (1) *After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week's wages as compensation for length of service.*
- (2) *The employer's liability for compensation for length of service increases as follows:*
- (a) *after 12 consecutive months of employment, to an amount equal to 2 weeks' wages;*
- (b) *after 3 consecutive years of employment, to an amount equal to 3 weeks' wages plus one additional week's wages for each additional year of employment, to a maximum of 8 weeks' wages.*
- (3) ***The liability is deemed to be discharged if the employee***
- (a) *is given written notice of termination as follows:*
- (i) *one week's notice after 3 consecutive months of employment;*
- (ii) *2 weeks' notice after 12 consecutive months of employment;*
- (iii) *3 weeks' notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 weeks' notice;*
- (b) *is given a combination of notice and money equivalent to the amount the employer is liable to pay, or*
- (c) ***terminates the employment, retires from employment, or is dismissed for just cause.*** (my emphasis)

In this appeal, the employer alleges that all seven employees terminated their employment and that Casino's liability to pay compensation for length of service to each of the employees is therefore discharged. Did each and everyone of the employees quit?

It is the right of the employee to resign but it is a right which is personal to the employee. An employer may not deem that an employee has quit. It is not enough that an employee simply says that they are going to quit. There must be clear, unequivocal facts which show that the employee voluntarily exercised his or her right to quit. And, in that regard, the act of quitting has

been found to have both a subjective and an objective element. Subjectively, the employee must form the intention to quit. Objectively, he or she must act in a way, or demonstrate conduct, which is inconsistent with the continuation of the employment. [*Burnaby Select Taxi Ltd. and Zoltan Kiss*, (1996), BCEST No. D091/96]

The rationale for the Tribunal's approach has been stated as follows:

... the uttering of the words "I quit" may be part of an emotional outburst, something stated in anger, because of job frustration or other reasons, and as such it is not to be taken as really manifesting an intent by the employee to sever his employment relationship.

[Re University of Guelph, (1973) 2 L.A.C. (2d) 348

*In respect to Badh, Dhaliwal, Khangura, Panaich, and Sandhu*

Badh, Dhaliwal, Khangura, Panaich, and Sandhu did ask, through Gill, for their final pay cheques. But I find that there are not plain, clear facts which show that any of the five employees voluntarily resigned their employment. It is also apparent to me that Casino acted, quit possibly without deliberate intent, to terminate the five in that it failed to provide them with any work after the 22<sup>nd</sup> of July, 1998.

When Gill asked for final pay cheques on the 28<sup>th</sup> of July, no member of the regular crew had worked for several days, not since they were called into work on the 22<sup>nd</sup>. As full time employees, they had reason to expect at least 4 days of work in that period, possibly even 5 given the need to work weekends, and the fact that it was the busiest time of the year. In failing to provide them with any work after the 22<sup>nd</sup>, I find that Casino so altered the conditions of employment that there was constructive dismissal. The delegate's decision is both fully consistent with that conclusion and section 66 of the *Act*. That section is as follows:

**66** *If a condition of employment is substantially altered, the director may determine that the employment of an employee has been terminated.*

In addition to the above, I find that the evidence does not show that any member of the regular crew announced, or somehow demonstrated, the intention to quit. In the first regard, Casino claims that Gill announced for the regular workers that it was their intention to quit. Yet Gill denies that he said something about quitting. And even if he had said something like "yes, they were quitting", what could that have meant. Rather than plainly, clearly indicating a plan to quit employment, it might indicate that he thought that they were quitting in the sense of being finished for the day, or something along those lines. And also, and even more importantly, it is unclear that Gill, in the circumstances, could speak for any member of the regular crew, that he was not just speaking for himself, or setting forth his opinion on what he thought others might do. As noted above, the right to quit lies with the individual.



I find, further, that the employees did not act, nor did they demonstrate, conduct which implies an intention to quit. When the five members of the regular crew left Casino on the 27<sup>th</sup>, they each left with the expectation that they would later be meeting with Ingold. That indicates to me that they wanted to continue working for Casino. And, contrary to what Chang may believe, the mere fact of their leaving on the 27<sup>th</sup> does not indicate that any member of the regular crew was going to quit, or was quitting, their employment. It is either that they were sent home for the day or it is that they simply had no real reason to stay, the latter because no one had given them any work to do.

Badh, Dhaliwal, Khangura, Panaich, and Sandhu are all entitled to compensation for length of service. As Badh and Panaich were served notice of termination on the 22<sup>nd</sup> of July but did not work after that date, they, like the others, are owed the full amount of their compensation for length of service. That part of the Determination that deals with the members of the regular crew is confirmed.

Narinder Gill

While the delegate treats all of the employees as a homogenous group for the purpose of the Determination, I find that the circumstances of Gill's termination are rather different from the circumstances surrounding termination of the regular crew. Casino did not alter the terms of his employment. Gill kept on working. He worked the 23<sup>rd</sup> and 24<sup>th</sup>. He had the weekend off. He then reported for work on the 27<sup>th</sup> but he refused to work and, on the 28<sup>th</sup>, he did not report for work even though it was a regular day of work for him.

Gill denies that he ever announced that it was his intention to quit. But I find that his conduct implies that it was his intention to quit. As noted in *Wayne Blackburn*, (1998) BC EST #D543/98,

Where, as here, there is no statement which clearly informs of the intention to quit, it may be inferred where there is an act or conduct from which it may be implied that the employee fully intended to resign.

Casino did fail to arrange an appointment for Gill and I believe that Gill was quite upset by that and Casino in general. But Casino did not act to terminate Gill. Gill refused to work on the 27<sup>th</sup> and he then made the decision not report for work on the 28<sup>th</sup>. From what I can see, that was a selfless, noble act of solidarity with his fellow workers. But selfless, noble act or not, it was a decision voluntarily made and it, by implication, shows that he decided to quit. He carried out his plan on asking for his final paycheque.

I find there are plain, clear facts which show that Narinder Gill voluntarily resigned his employment. Casino is not liable to pay Gill compensation for length of service. Casino owes

Gill only what he is owed in statutory holiday pay plus 4 percent vacation pay and interest. I calculate that to be \$81.90 plus whatever interest is owed pursuant to the *Act*.

Charanjit Singh

As with Gill, the circumstances of Singh's termination differ in important respects from those in respect to termination of the regular crew. He was the manager, manager of the regular crew and also the new crew. Casino did not alter the terms of his employment. He worked the 23<sup>rd</sup>, the 24<sup>th</sup> and also the 25<sup>th</sup> before having his regular day off. For some unexplained reason, he left work early on the 27<sup>th</sup>. But he did not report for work on the 28<sup>th</sup> even though it was a regular day of work for him.

Singh claims that he was fired on the 27<sup>th</sup>. Yet that was when Gill went to arrange future meetings with Ingold. That is inconsistent with what is claimed. And Singh's own submission is that Ingold told him "to go home and have a nice day". That is not to tell a person that they are fired, or even to take two days off.

I am satisfied that the reason that Singh did not report for work on the 28<sup>th</sup> is that he, like Gill, decided that he had enough of Ingold and Casino, and that rather than reporting for work on the 28<sup>th</sup>, that he would quit his employment. There is no evidence that Casino had a hand in his resignation: That his decision not to report for work on the 28<sup>th</sup> was anything but voluntary. The formation of an intention to quit is in his case also implied by the facts. The plan to quit was carried out when Gill, on his behalf, asked for final paycheques.

I find there are plain, clear facts which show that Charanjit Singh voluntarily resigned his employment. Casino is not liable to pay Singh compensation for length of service. Casino owes Singh no moneys and the Determination is amended so that it reflects that.

**ORDER**

I order, pursuant to section 115 of the *Act*, that the Determination dated January 15, 1999 be varied.

Casino owes Sukhwinder S. Badh, Sarbjit K. Dhaliwal, Parminder K. Khangura, Parminder S. Panaich, and Gurpreet K. Sandhu moneys as set out in the Determination plus whatever further interest is owed pursuant to Section 88 of the *Act*.

Narinder Gill is owed only statutory holiday pay, 4 percent vacation pay on that, and interest. That is \$81.90 plus whatever interest is owed under section 88 of the *Act*.

I find that Charanjit Singh is not owed compensation for length of service and that Casino owes him no moneys under the *Act*.

**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**