Employment Standards TRIBUNAL

An appeal

- by -

Tradex Foods Inc.
(the "Employer")

- 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: Kenneth Wm. Thornicroft

FILE No.: 2003A/111

DATE OF DECISION: June 6, 2003

DECISION

INTRODUCTION

This is an appeal filed by Tradex Foods Inc. (the "Employer") pursuant to section 112 of the *Employment Standards Act* (the "*Act*"). The Employer appeals a Determination that was issued by a delegate of the Director of Employment Standards (the "Director") on March 31st, 2003 (the "Determination").

The Director's delegate determined, following an oral hearing conducted on March 5th, 2003, that the Employer owed its former employee, Lawrence Hartman ("Hartman"), the sum of $1,942.26 on account of two weeks' wages as compensation for length of service, concomitant vacation pay (calculated at 4%) and section 88 interest.

By way of a letter dated May 29th, 2003 the parties were advised by the Tribunal's Vice-Chair that this appeal would be adjudicated based on their written submissions and that an oral hearing would not be held (see section 107 of the *Act* and *D. Hall & Associates v. Director of Employment Standards et al.,* 2001 BCSC 575). I might add that none of the parties requested that the Tribunal hold an oral hearing in this matter.

THE DETERMINATION

The Employer operates a seafood sales business and Hartman was employed by the firm as a sales representative from September 11th, 2000 until October 16th, 2002. The only issue before the delegate was whether Hartman voluntarily resigned his position on October 16th or, as the delegate eventually determined, was he terminated without receiving 2 weeks' compensation or 2 weeks' written notice in lieu of compensation.

The relevant chain of events commenced with an October 16th e-mail from Hartman to his supervisor in which he indicated that he had sent off his resume to a "headhunter", the presumption being that he was intending to look for another job. Clearly, this e-mail was not a resignation. This e-mail led to two meetings that afternoon which resulted, depending on the version of events one accepts, in either Hartman's resignation or termination.

It was conceded by the Employer that it was company policy not to retain employees who were looking for other work.

The delegate concluded that Hartman would not have resigned if he had yet to secure other employment and, given the Employer's admitted policy regarding employees who were looking for other work, that Hartman's employment was, in all likelihood, terminated.

REASONS FOR APPEAL

The Employer appeals the Determination on the grounds that:

- the Director's delegate failed to observe the principles of natural justice in making the Determination [section 112(1)(b) of the *Act*]; and

- evidence has become available that was not available at the time the Determination was being made [section 112(1)(c) of the *Act*].

I shall address each ground of appeal in turn.

ANALYSIS

Natural Justice

The Employer has not provided *any* particulars to support this ground of appeal. Since the Employer has not filed any sort of relevant submission with the Tribunal, I am wholly unable to determine how or why the Employer feels that the principles of natural justice were contravened in this case. I might add, based on the available record, it would appear that this assertion is totally groundless.

New Evidence

Since the Employer did not file a submission with the Tribunal, I am similarly unable to determine what "new evidence" the Employer seeks to advance at this point. The appeal form, other than checking off the above-noted two appeal grounds, states only that: "We feel that the determination was made on assumptions rather than facts". No further particulars were provided.

Attached to the Employer's appeal form is a document dated November 2001 which purports to be a company policy statement regarding "Termination". Assuming this is the evidence that the Employer now wishes to introduce, I would first note that it obviously was available as of the hearing before the delegate (March 5th, 2003). Secondly, its relevance is not immediately apparent and the Employer has not provided any further guidance in this regard.

The only other filing before me from the Employer is a letter dated May 21st, 2003 which does not address either of the two grounds of appeal advanced by the Employer. In essence, this one-page letter simply acknowledges that it did not submit the above-noted page of its policy manual to the delegate and then asserts that the delegate's findings of fact ought to be set aside.

In sum, this appeal, on its face, appears to be totally devoid of merit and must, therefore, be dismissed.

ORDER

Pursuant to subsections 114(1)(a) and (c) subsection 115(1)(a) of the *Act*, I order that this appeal be dismissed and that the Determination be confirmed as issued in the amount of **$1,942.26** together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal