

**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 -

Donald Stayko  
("Stayko")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorna Pawluk

**FILE NO.:** 98/187

**DATE OF DECISION:** July 8, 1998

## DECISION

### OVERVIEW

This is an appeal by Donald Stayko ("Stayko" or the "employee") under Section 112 of the *Employment Standards Act* (the "Act") from a Determination dated March 5, 1998 by the Director of Employment Standards ("the Director"). Stayko argues that Liquidation World Inc. ("Liquidation World" or the "employer") misrepresented the position of manager for which he was hired.

### ISSUE TO BE DECIDED

The issue is whether Liquidation World breached section 8 of the *Act* in misrepresenting the position of manager.

### FACTS

On September 29, 1997, Liquidation World ran an ad in the *Penticton Herald* for a manager of a new store it was going to open in Penticton. After a brief description of Liquidation World business, the ad stated that "[i]deal candidates will have managed a large store/staff and be familiar with many different kinds of merchandise". They promised "an exciting and rewarding work environment". Following an October 3, 1997 interview, the job was offered to Stayko. The parties discussed salary, medical coverage and a three month probation period and on October 10, 1997, Stayko accepted the job. He gave his employer of 5 years notice and on October 16, 1997 he commenced his new job. He was under the impression that he would receive training at the Kelowna location of Liquidation World, but was in fact sent to Kamloops from October 17-20 where he was trained with other store staff. However, a promised meeting with Dale MacDougall, the company's marketing manager, where Mr. Stayko was to learn about the company's merchandising approach, did not happen. Eighteen days into the job, Stayko was asked to resign and he did. Mr. MacDougall said his "gut feeling" was that Stayko could not handle the job of manager. Stayko filed a complaint with the Employment Standards Branch claiming compensation for length of service and damages for breach of section 8.

The complaint was dismissed in the Determination being appealed here. The Director's Delegate found that section 63 did not apply as Stayko had not been employed for 3 consecutive months as required by that section. The Delegate also found no breach of section 8, concluding that the employer had simply placed an ad in the newspaper for managers and Stayko had responded. She found no misrepresentation about availability of the position, type of work or conditions of employment and the employer had not induced Stayko to become an employee. It was noted that Stayko knew the store was not yet open to the public and that Head Office personnel would be present to assist in the set up,

although his eventual duties once the store was open, might have been different. Furthermore, the delegate interviewed a Liquidation World employee who confirmed that he had been hired by Stayko and that he thought Stayko discharged his duties well.

The gist of Stayko's submissions on appeal was summed up by him this way:

As a (sic) executive, and store manager details were not made clear to me, and head office staff frustrated my ability to perform my duties, by ignoring my questions and disregarding my concerns and interputing (sic) them as open disagreement. . . .

I was "never" . . . given instruction by Liquidation World Inc. "prior" to being hired as to what was expected of me as an executive in the position of Manager, . . . "before" a store was opened to the public!!! The only experience "I" had was my own previous experience of 30 years!

The "head office" management staff were in charge and in control of everything and everybody from day one, I could not hire, spend, or implement store/staff ideas without . . . "first their approval . . . either each as on individuals (sic) or "all" 3!!

Should'nt I have been advised of this "chaos" element . . . "prior" to being hired as manager so I could take it into consideration.

He said that he did not have the freedom to hire and fire and while he dismissed three employees, he did so at the insistence of head office personnel. He asks for a "thorough review" of this matter by the Tribunal, a letter addressing the issues of the appeal, a letter of apology from Dale MacDougall and Darren Gillespie and three months salary for the three month probationary period he could have "at least" completed if it had not been for the circumstances he outlined.

On behalf of the employer, Darren Gillespie submits that the facts as stated in the Determination are accurate and that the company has used the same methods to open over 60 stores in 20 years.

The Director's submission responded to Mr. Stayko's statement that he was not permitted to hire staff by indicating that the Delegate interviewed Merv Furphy who said he was hired by Mr. Stayko.

## **ANALYSIS**

After considering the Determination and parties' submissions, I must dismiss the appeal. While I have the utmost sympathy for Mr. Stayko, nothing in the submissions convinces me that the Director's Delegate erred in finding no breach of section 8.

It is useful to begin with an examination of the provisions in section 8:

An employer must not induce, influence or persuade a person to become an employee, or to work or to be available for work, by misrepresenting any of the following:

- the availability of a position;
- the type of work;
- the wages;
- the conditions of employment.

The Delegate found that Liquidation World had not induced, influenced or persuaded Stayko to become an employee, but had only placed an ad to which he had responded. Stayko related a number of problems which arose for the short period he was with Liquidation World and described a number of ways other corporate managers actively interfered with his ability to carry on his job. However, he did not convince me that the Determination was incorrect and as the appellant he has the onus.

While Liquidation World actions may amount to wrongful dismissal at common law, the jurisdiction of the Director and this Tribunal flows from the *Act* and section 63 permits compensation for length of service only where there has been three consecutive months of employment. Since Stayko's employment lasted only 18 days, there is no jurisdiction under section 63 to award damages.

**ORDER**

Pursuant to section 115 of the Act, I confirm the Determination dated March 5, 1998.

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**Lorna Pawluk**  
**Adjudicator**  
**Employment Standards Tribunal**