

**BC EST #D196/96**

**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 -

On Track Computer Training  
("On Track")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

Adjudicator: Jerry W. Brown

File No: 96/185

Hearing Date: May 30, 1996

Date of Decision: July 23, 1996

**DECISION**

**APPEARANCES**

Russ Rossi, Principal	On Track Computer Training Ltd. and On Track Computer Training International
Jim Rosevear, Accountant	On Track Computer Training
Victor Lee	For the Director
Stormee Linfoot	Claimaint

**OVERVIEW**

This is an appeal brought by On Track Computer Training ("On Track") pursuant to Section 112 of the *Employment Standards Act* (the "Act"), from Determination No. CDET 001236 issued by the Director of Employment Standards (the "Director") through its Delegate on February 20, 1996.

The Director determined that On Track owed Stormee Linfoot ("Linfoot"), the complainant, \$1,179.64 as compensation for length of service, plus vacation pay and interest.

On Track's reasons for appealing were as follows:

1. The Director's Delegate erred in finding that On Track and On Track Computer Training International were Associated Businesses according to the Act;
2. The Director's Delegate erred in finding that Linfoot was owed compensation for length of service because of:
  - (a) The association with the above noted companies; and/or
  - (b) She had been fired rather than quit;

3. That she was an independent contractor during her tenure in London, England working for On Track Computer International and therefore not entitled to compensation in lieu of notice, having not worked more than six months for On Track;
4. That she was let go for just cause when as part of her conditions of employment, she did not accept a temporary transfer to Las Vegas.

## **FACTS**

Linfoot had been employed by On Track during an earlier period as a receptionist.

In the late Summer of 1994 Linfoot had a discussion with Lisa Watson ("Watson"), who was the managing director of On Track Computer Training International based in London.

Both On Track and On Track Computer Training International are owned by Russ Rossi ("Rossi"). Rossi was aware of the discussions between Watson and Linfoot, about Linfoot being hired to work for On Track Computer Training International in London. The decision to hire Linfoot was cleared with Rossi and Linfoot began working for On Track Computer Training International in London on September 24, 1994. Linfoot returned to Vancouver on May 21, 1995 for medical reasons.

She began working in On Track's Vancouver office on June 1, 1995.

Her employment was terminated on July 31, 1995.

## **ISSUES TO BE DECIDED**

1. Are On Track and On Track Computer Training International associated businesses under the Act?
2. If so, was Linfoot entitled to compensation for length of service or did she:
  - (a) Quit; or
  - (b) Was she terminated for cause for refusing the transfer as part of her conditions of employment?

**ANALYSIS**

Rossi's evidence was clear on the point of his role and ownership in both On Track and On Track Computer Training International. He was the owner of both. He also indicated that while he had day to day control and operations in Vancouver with respect to the London facility, he acknowledged that a decision to hire Linfoot and/or anybody else had to be cleared through him. This was the case even though his evidence was that the managing directors of the various facilities outside of Vancouver made the decisions.

Section 95 of the Act deals with associated corporations. It is as follows:

- "95. If the director considers that businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination of them under common control or direction,
- (a) the director may treat the corporations, individuals, firms, syndicates or associations, or any combination of them, as one person for the purposes of this Act, and
  - (b) if so, they are jointly and separately liable for payment of the amount stated in a determination or in an order of the tribunal, and this Act applies to the recovery of that amount from any or all of them."

It must be determined that a relationship between the parties makes it appropriate that they be made jointly responsible for any purposes under the Act.

To be associated there must be common control or direction. This can refer to legal arrangements and/or financial arrangements that govern how the various entities operate. Ownership of the entities, degree of integration of operations, the financings, are all relevant when determining if there is common control or direction. Common directors and officers involvement in day to day directions of employees are other matters that must be examined. Based on the evidence presented by Rossi, I find that for the purposes of the Act, On Track and On Track Computer Training International are associated businesses.

Having decided this, Linfoot's employment with On Track began September 24, 1994 and ended May 21, 1995, during which time she worked as a computer instructor. Based on this conclusion, she would be entitled to compensation for length of service unless she was terminated for just cause or quit.

Dealing with the issue of just cause, I find that the numerous minor matters that Rossi raised in his evidence about Linfoot's performance were not addressed with Linfoot, and that she did not have notice that these matters were problems for her employer or that her employment was at risk.

I therefore must turn my attention to whether or not Linfoot's refusal to take the immediate move to Las Vegas was just cause for her dismissal in that it was a condition of employment as alleged by Rossi. There seemed to be some confusion over the details of the discussions surrounding the temporary transfer to Las Vegas. Linfoot's evidence was that she requested a delay on the transfer until she could make arrangements for her cats and her new apartment. In any event, the important issue is whether or not this move was a condition of employment. Given the fact that Linfoot went to work for the Vancouver office after arriving back from Britain, it is clear that some movement may have been anticipated by the parties. There was no evidence before me to indicate though that it was clearly a condition of employment that Rossi and/or On Track could require an employee, particularly Linfoot, to up and move on short notice. I am persuaded by the evidence that the timing of a transfer, whether or not Linfoot would accept a transfer, and whether a transfer would be of a permanent or temporary nature would have been a matter of mutual agreement between the parties.

Given that, I find that there was no just cause for terminating Linfoot's employment based on her refusal to take the temporary assignment to Las Vegas.

Did Linfoot quit? The evidence again was contradictory. However, I prefer Linfoot's evidence that she did not quit but was terminated by Rossi. Linfoot had just returned from London, was establishing her home and it would follow that she had no reason to quit her employment. Her evidence was that she was prepared to make arrangements to accommodate her employer and undertake the temporary Las Vegas assignment, but that this ended when she was terminated for not immediately moving to Las Vegas.

Having reached the above conclusions, there is no evidence which persuades me that the Director's determination was incorrect.

**ORDER**

I order, pursuant to Section 115 of the Act, that this appeal is dismissed and Determination No. CDET 001236 be confirmed.

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JERRY W. BROWN  
Adjudicator  
Employment Standards Tribunal