

**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 -

Dale E. Friend  
("Friend")

- of a Determination issued by -

The Director of Employment Standards  
(The "Director")

**ADJUDICATOR:** Ralph Sollis

**FILE NO:** 96/284

**HEARING DATE:** July 24, 1996

**DATE OF DECISION:** August 2, 1996

**DECISION**

**APPEARANCES**

Dale E. Friend	On his own behalf
Raymond Stea	For the Director of Employment Standards
Jennifer Catalano & Barry Rideout	For Southland Canada, Inc.

**OVERVIEW**

This is an appeal by Dale E. Friend ("Friend"), pursuant to Section 112 of the Employment Standards Act ("the Act") against Determination of the Director of Employment Standards ("the Director") issued on April 15, 1996 (Determination #CDET 001953) wherein the Director found that the employer, ("Southland") had not contravened Section 63(1) of the Act.

**ISSUE TO BE DECIDED**

The issue on appeal was whether Friend was terminated by Southland or did he terminate his own employment?

**FACTS**

The parties agreed that the following facts were not in dispute:

1. Friend was employed as a sales assistant at the 711 store located at Hillside & Douglas Streets in Victoria, BC.
2. He was so employed from November 16, 1993 to November 30, 1995.
3. His rate of pay, at termination, was \$7.75 per hour and during the last 8 weeks Friend averaged 39 hours per week.
4. If severance pay is owing the amount would be as follows:

$$\begin{aligned} 39 \text{ hours} \times \$7.75 &= \$302.25 \times 2 \text{ weeks} &= \$604.50 \\ \text{Vacation Pay} &= \underline{24.18} \end{aligned}$$

**BC EST #D209/96**

Total = \$628.68

I heard the evidence of Friend and Barry Rideout ("Rideout") and the arguments of both witnesses and the officer on behalf of the Director.

Friend testified that he was required to resign as a result of a conflict between himself and Southland over the sale of cigarettes.

Southland's policy for cigarette sales is set out in Exhibit 2 of which the relevant information is, in part as follows:

4. Ask for identification whenever a tobacco customer appears to be under 21 years of age!
5. Forms of legal identification for tobacco sales are:
  - Driver's license
  - Passport
  - Military ID
  - BCID
  - Citizenship Card
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- 

Friend stated that the Southland's policy did not comply with the law over the sale of tobacco products to minors. He felt it was his responsibility to ensure that persons purchasing cigarettes were for their own use and would not be resold or given to a minor. Friend realized that his standards were at odds with Southland's policy and that his continued employment was in jeopardy over this issue.

Friend had received several warnings over the issue and had been given a one week suspension and reduction to part time status just prior to his resignation. All of these disciplinary measures were directly related to Friend's refusal to conform with Southland's policy on tobacco sales.

Rideout's evidence was that there has been a number of incidents over tobacco sales with Friend which had resulted in the employee receiving verbal and written disciplinary notices, suspension and reduction in hours of work. In spite of repeated attempts to reaffirm Southland's policy, Friend refused to comply. Friend had been advised that his job was in jeopardy if he did not comply with the employer's policy concerning tobacco sales.

## ANALYSIS

It is clear from the evidence of the parties that Friend had been made aware, on several occasions of Southland's policy concerning the sale of tobacco products. It is admirable that Friend had such high

standards concerning this matter, however it was the employer's right to set the policy pertaining to the conduct of their business.

The issue is whether or not Friend quit. The right to quit is personal to the employee and there must be clear and unequivocal facts to support a conclusion that the right has been voluntarily exercised by the employee involved.

It is my conclusion that Friend did quit. Friend clearly had a choice either to comply with his employer's policy, resign or face further disciplinary action which may have resulted in termination for just cause.

Faced with these choices Friend resigned effective November 30, 1995.

**ORDER**

Pursuant to Section 115 of the Act, I order that Determination #CDET 001953 be confirmed.

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Ralph Sollis  
Adjudicator  
Employment Standards Tribunal