

**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-

George Chang

-of a Determination issued by-

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** E. Casey McCabe

**FILE NO.:** 97/109

**DATE OF HEARING::** May 26, 1997

**DATE OF DECISION:** June 26, 1997

**DECISION**

**APPEARANCES**

George Chang	for himself
Robert Brookfield	counsel for T & T Supermarket Inc.
Irene Lee	interpreter

**OVERVIEW**

This is an appeal by Mr. George Chang pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”). Mr. Chang appeals the Determination by the delegate of the Director of Employment Standards (the “Director”) that he was not entitled to compensation for length of service pursuant to Section 63(2) of the *Act*.

**ISSUE TO BE DECIDED**

Did the employee quit his employment thereby relieving the employer of liability under Section 63(2) of the *Act*?

**FACTS**

Mr. Chang was employed by T & T Supermarket Inc. and at the time of his termination was working in the produce department in the Richmond store. He had recently transferred to that store from the Metrotown location of the employer. He had commenced work with the employer on January 4, 1995. His employment ended on November 6, 1996. He filed his complaint on November 8, 1996.

The incident which triggered the termination of employment occurred on November 6, 1996. A female employee had gone to the employer’s office in a very emotional state complaining that Mr. Chang, while waiving a knife, had been yelling at her when she had asked him for some assistance with some product. The store manager, Mr. Hsieh, was informed by the female worker that she had felt very frightened by Mr. Chang’s actions. Mr. Hsieh asked a management trainee and a department head, Mr. Kuo, to investigate. After they had reported back, Mr. Hsieh called Mr. Chang to his office.

Mr. Hsieh testified that Mr. Chang admitted that he had been waiving the knife while talking to the female employee. He testified that he explained to Mr. Chang that it was very important that the employees cooperate in the work place and that he viewed the situation as one of a lack of cooperation by Mr. Chang. He further stated that he thought Mr. Chang was displaying a very poor attitude towards the managers and his fellow employees. Specifically Mr. Hsieh asked Mr. Chang if he would be willing to cooperate in the future with the female employee and the other

employees. He stated that Mr. Chang refused to directly answer whether he would cooperate. Mr. Hsieh testified that during the course of the conversation Mr. Chang stated that he did not want to cooperate with the employee and that if the employer was not satisfied with him that the employer could say so. He further stated that "if you terminate me you have to find a reason" but that if the employer will just say that it is not satisfied then Mr. Chang stated that he would "leave right now". Mr. Hsieh asked Mr. Chang to repeat what he had just said and Mr. Chang did so. Mr. Hsieh then stated that he was not satisfied with this attitude at which point Mr. Chang arose and left.

It should be noted that Mr. Chang did not take exception to the evidence of the conversation in the office as provided by the employer. Instead he took the position that the store manager, Mr. Hsieh, had said that he was not satisfied with him before he left. Mr. Chang takes the position that he was dismissed without just cause rather than voluntarily terminating his employment. He states that he had no intention to quit his employment but rather that the company intended to fire him because he was demanding a pay increase.

In support of his position, Mr. Chang testified that he had a telephone conversation with Mr. Kuo at approximately 10:00 p.m. on the evening of November 6, 1996. Mr. Chang testified that it was Mr. Kuo that called him. Mr. Kuo testified that indeed he did call Mr. Chang in order to comfort him and to say to him that if he is not working at T & T Supermarket Inc. any longer he must come in to sign his termination notice. Mr. Kuo testified that he told Mr. Chang that if he wasn't coming back that Mr. Chang must sign the termination slip. He also emphasized that it was important for employees to cooperate with each other. Mr. Kuo also stated that Mr. Chang said that he could survive in Vancouver without employment at T & T Supermarket Inc. Under cross-examination Mr. Kuo agreed that Mr. Chang had told him that he would pursue the matter but reiterated that Mr. Chang had said that he was leaving the company. Under further cross-examination Mr. Chang put to Mr. Kuo that the company did not allow him, Mr. Chang, to return to work to which Mr. Kuo answered "yes, of course".

It is notable that Mr. Chang's regular shift is 9:00 a.m. to 6:00 p.m. The incident on November 6, 1996 occurred late in the day and the meeting in the office occurred at approximately 6:00 p.m. In fact, Mr. Chang's time card for that day shows him punching out at 6:02 p.m. The following day Mr. Chang did not report to work at 9:00 a.m. Rather, at approximately 10:30 a.m. he telephoned Ms. Lau, the Human Resources Manager. In this conversation Mr. Chang tried to distinguish between leaving employment and quitting employment. Mr. Chang stated that he used the word leave in the sense of leaving the premises that day and not in the sense of quitting his employment. It was Ms. Lau's position that by leaving the meeting and not reporting to work at 9:00 a.m. that morning he had quit his job. On November 8, 1996 Mr. Chang filed his complaint with the Employment Standards Branch.

## ANALYSIS

Mr. Chang is the appellant in this matter. The onus rests on the appellant to show that the Determination should be overturned. Mr. Chang takes the position that he did not quit his employment. Mr. Chang takes the position that the employer terminated his employment and did not have just cause to do so. The employer argues that both the subjective and objective element of a quit are present in this case and that Mr. Chang did in fact voluntarily leave his employment. Alternatively, the employer argues that it had just cause to terminate Mr. Chang's employment.

I do not find it necessary to determine whether the employer had just cause to terminate Mr. Chang. I am satisfied that Mr. Chang's actions of November 6 and 7, 1996 show the subjective and objective intention to quit his employment. During the meeting of November 6, 1996 Mr. Chang was given the opportunity to explain his side of the incident with the female employee. Mr. Chang's attitude was one of insubordination and disrespect. He challenged the employer's authority by telling the employer that he didn't have to cooperate with the female employee and that if the employer was not satisfied with him that he just had to say that he was not satisfied and that Mr. Chang would leave right now. The employer then told Mr. Chang that he was not satisfied with his attitude and Mr. Chang promptly left the meeting. Furthermore, in the telephone conversation that evening with Mr. Kuo, Mr. Chang stated that he did not need to work for T & T Supermarket Inc. to survive in Vancouver. I find that these statements and actions fulfil the subjective element. The objective element is met by Mr. Chang's failure to report to work at 9:00 a.m. the following day. Mr. Chang argues that he did not report to work the following day because the store manager had told him that he was not satisfied. He argues "how was it possible to return to work if the manager was not satisfied with his work?" He says this is the reason why he made the decision to call the Human Resources Department the following day. Mr. Chang argues that he could not return to work because the employer would not allow him to. I do not accept that argument. It was Mr. Chang who did not report to work for his following shift and I find that in these circumstances the employer can justifiably assume that the employee had quit and is not obligated to allow Mr. Chang to return to work when Mr. Chang purports to disavow the intent of his actions.

For the above reasons I find that Mr. Chang voluntarily terminated his employment and that the employer is not liable under section 63(2) of the *Act* for termination pay.

## ORDER

Pursuant to Section 115 of the *Act* I order that Determination No. 005320 be confirmed.

**E. Casey McCabe**  
**Adjudicator**  
**Employment Standards Tribunal**