

An appeal

- by -

Rupinder Mangat
("Rupinder")

- 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: April D. Katz

FILE No.: 2003A/121

DATE OF DECISION: August 6, 2003

DECISION

OVERVIEW

Rupinder Mangat (“Rupinder”) worked for Organika Helath Products Inc. (“Organika”) in the Production Department. Rupinder filed a complaint with the Director of Employment Standards (“Director”) alleging her employment was terminated because she was pregnant. The Director’s delegate found that Organika did not know that Rupinder was pregnant until after the decision to terminate her employment had been made and therefore concluded that Rupinder’s employment ended because of incidents with other staff, her frequent late arrivals and her absenteeism not because she was pregnant. Rupinder appealed the Director’s Determination on the basis that the Director failed to observe the principles of natural justice in making the Determination.

The appeal proceeded by way of written submissions from the Appellant. The Respondent did not make any submissions and Director’s Delegate indicated that the Determination would speak for itself. The Delegate provided a copy of the documentation from the investigation file.

ISSUE

The first issue to be decided is if the Director failed to observe the principles of natural justice in making the Determination as alleged in the appeal.

The second issue arises if the Director failed to observe the principles of natural justice. The second issue is the appellant’s argument that the Director erred in concluding that the reason for Rupinder’s employment ending was not due to her pregnancy.

ARGUMENTS

Rupinder argues that her file was not fully investigated and that the records about her provided by Organika are untrue. She states that she took no more time off for illness than other employees. She argues that she had no problems with her co-workers and her supervisors had not raised any concerns with her about insubordination. She points out in her appeal that there were no discipline letters on her human resources file or a record of warnings.

The Director’s Delegate chose to rely on the findings in the Determination that the decision to end Rupinder’s employment was made without the employer knowing that she was pregnant and therefore the issue of Rupinder’s pregnancy played no role in the decision to end Rupinder’s employment. The Delegate relied on the Determination and the information in support of Organika’s decision in the file record of correspondence.

FACTS

The essential facts are not in dispute. Rupinder commenced work with Organika on September 9, 2000 in the production department. She earned \$9.60 per hour. Rupinder was absent from work on several occasions, some with an explanation of illness and several times without any explanation. The

employment record shows that there were incidents when Rupinder's supervisor had difficulty with her due to her temper. The specific dates were May 24, 2001, August 29, 2001, January 24, 2002, January 25, 2002 and February 14, 2002. On January 24, 2002 three co-workers wrote to the Shipping Supervisor complaining about the negative impact Rupinder's behaviour had on their teamwork. On February 19, 2002 Rupinder went on leave and received a Record of Employment. On March 28, 2002 Organika decided to end Rupinder's employment and issued her a Record of Employment ending her employment. Organika provided compensation for length of service with her March 28, 2002 Record of Employment. On April 4, 2002 Rupinder met with the Organika and told them she was pregnant.

LAW AND ANALYSIS

The burden of establishing that a Determination is incorrect rests with an Appellant. On the evidence presented, I am unable to find that burden has been met.

Rupinder's appeal asks for further investigation but does not refute the fact that her pregnancy was not part of Organika's consideration in ending her employment.

Based on the facts submitted I cannot find any basis on which to conclude that Rupinder's employment ended because of her pregnancy. One crucial fact is that Organika made the decision to end Rupinder's employment without any knowledge of her pregnancy. It may be that absences related to pregnancy were a contributing factor to the decision, however Rupinder's absences without explanation predated her pregnancy. The difficulties Rupinder had with co-workers also predated her pregnancy. On these facts it is difficult to find that Rupinder's pregnancy had anything to do with the decision to end her employment.

Section 112(1) of the Act provides that a person may appeal a determination on the following grounds:

- (a) the director erred in law
- (b) the director failed to observe the principles of natural justice in making the determination; or
- (c) evidence has become available that was not available at the time the determination was being made.

Rupinder relies on the second ground of appeal, that the director failed to observe the principles of natural justice in making the Determination. In this appeal the burden Rupinder to show that the Director failed to observe the principles of natural justice in making the Determination.

The principles of natural justice are, in essence, procedural rights that ensure parties a right to present their evidence and be heard by an independent decision maker. Rupinder has the right to know what allegations were made by Organika and that Rupinder had the right to respond. Rupinder's written submission suggests that she knew Organika was unaware of her pregnancy until after Organika had decided to end her employment. There is no evidence of a denial of natural justice in the material filed with this appeal.

If there had been a denial of natural justice, the onus is on an appellant in an appeal of a Determination to show on a balance of probabilities that the Determination ought to be varied or cancelled. To be successful the submissions from the appellant must demonstrate some error in the Determination, either in the facts accepted, the factual conclusions reached or in the Director's analysis of the applicable law.

I find no evidence that the Director erred.

CONCLUSION

The appeal does not disclose any evidence to support a finding that Rupinder was denied natural justice in presenting its evidence to the Director. I therefore deny the appeal on these grounds.

Based on the evidence on the facts I find that there is no evidence of an error on the part of the Director in reaching the conclusions in the Determination. Rupinder's appeal is dismissed.

ORDER

Pursuant to section 115 of the Act, the Determination dated March 24, 2003 is confirmed.

April D. Katz
Adjudicator
Employment Standards Tribunal