

BC EST # D249/96

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 -

European Baby Basics Industries Ltd.
("EBBI")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

FILE NO.: 96/365

DATE OF HEARING: August 26, 1996

DATE OF DECISION: September 4, 1996

DECISION

APPEARANCES

for the appellant:	Owen Hairsine Sari Hairsine
for the respondent:	Bill Chapman Julia Cooke
for the director:	Steve Mattoo

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by European Baby Basics Industries Ltd. (“EBBI”) of a Determination, No. CDET 002339 dated May 27, 1996, issued by a delegate of the Director of Employment Standards (the “Director”). The Determination found the EBBI was obligated to pay length of service compensation to Julia Cooke because the employee had been terminated without notice and without cause. EBBI says that the employee voluntarily left their employment and has relieved EBBI of the obligation to pay length of service compensation.

ISSUE TO BE DECIDED

The issue in this case is whether Julia Cooke voluntarily left her employment with EBBI.

FACTS

EBBI exports baby diapers to Europe. Owen and Sari Hairsine purchased the company effective September 1, 1996. Julia Cooke began employment with EBBI February 2, 1992. Until December of 1995 Julia Cooke worked full time for EBBI. In December sales for the company slowed down and her hours were reduced. In January of 1996 sales continued to be slow and her hours were further reduced. Up to January 24, 1996 Julia Cooke had been absent for a few days. On or about January 24, 1996, she experienced some medical problem that was never fully explained to me which compelled her to ask for some time off. She acquired a medical certificate to support her request. On the same day Mr Hairsine asked his wife to prepare a Record of Employment for Julia Cooke and to have Employment Canada post her job in their Surrey office.

BC EST # D249/96

The Record of Employment was prepared and given to Julia Cooke on or about January 31, 1996. It was given to her by Mrs. Hairsine who told her she should apply for Unemployment Insurance sick benefits. The Record of Employment was incorrectly made out and was revised between January 31, 1996 and February 10, 1996. The original version of the Record of Employment and the revised version show the expected date of recall as “unknown”. Both Mr. and Mrs. Hairsine say this was a mistake and that Julia Cooke had told them on January 24, 1996 she wished to be permanently laid off.

On January 26, 1996, Mrs. Haisine called Julia Cooke and asked her to come into work for a brief period. She went in for approximately 2 and ½ hours on that day. On February 9, 1996, Julia Cooke attempted to return to work. When she arrived at the workplace she was met by Mr. Hairsine, who asked her to return the next day to pick up her severance. She did not go to work February 9. When she met Mr. Hairsine on February 10, he had prepared a severance cheque for her. She was asked to sign some Revenue Canada forms. She refused to do so, Mr Hairsine refused to provide her with the severance cheque.

By February 9, 1996, EBBI had replaced Julia Cooke.

ANALYSIS

Section 63(1) of the *Act* establishes a statutory liability on an employer to pay an employee length of service compensation upon completion of three consecutive months of employment. It is not only a statutory liability on an employer, but in a sense it is also an “earned” benefit to the employee that accumulates as the length of service of the employee increases. The employer may discharge its statutory liability by giving the appropriate written notice, a combination of notice and money or by the payment of an amount of money equivalent to the appropriate notice. In three circumstances, the actions of an employee may discharge the liability of the employer: if the employee quits, if the employee retires or if the employee engages in conduct that provides just cause for termination. In this case EBBI has suggested Julia Cooke quit her employment.

The act of “quitting” employment is a right that is personal to the employee and there must be clear and unequivocal evidence supporting a conclusion that this right has been voluntarily exercised by the employee involved. It has both a subjective and an objective element: subjectively, an employee must form an intention to quit; objectively, the employee must demonstrate some conduct or carry out some act inconsistent with further employment. In the circumstances, I do not agree Julia Cooke voluntarily terminated her employment. It is conceded by EBBI that on January 24, 1996 she absented herself from employment for accepted medical reasons. It is also conceded she attempted to return to work on February 9, 1996. This evidence is inconsistent with the act of quitting.

I must also ask why Mr. Hairsine prepared a severance cheque for Julia Cooke if he was of the opinion she had quit. This evidence is also inconsistent with any clear and unequivocal support for the proposition argued by EBBI.

EBBI has not met the burden placed on it to show either Julia Cooke voluntarily left her employment with EBBI or that the determination of the delegate of the director was wrong. The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that Determination No. CDET 002339, dated May 27, 1996, be confirmed.

David Stevenson
Adjudicator
Employment Standards Tribunal

DS:jel