

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-

Significant Signs Canada Ltd.

(“SSC” or the “employer”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 99/143

DATE OF HEARING: May 31st, 1999

DATE OF DECISION: June 25th, 1999

When Coard returned several hours later (about mid-afternoon), Jansen starting insulting and swearing at Coard accusing him of being a “liar” whereas Coard was asking Jansen to “calm down” and “take it easy”. Coard threatened to call the police. Jansen said he was leaving and taking the “rest of the week off”; Coard replied that he suggested to Jansen that Jansen take the “rest of the day” off but that “he could not take the rest of the week” and if he did so that “would force [Coard] to replace him; I never said he was fired”.

I note that since November 7th was a Friday, at most, only a few hours remained in the work day and thus Coard’s recollection of events must be questioned.

In any event, according to Coard, Jansen replied “I’m outa’ here!” and, after retrieving a few personal effects--in effect “cleaning out” his desk--left the premises. Jansen did not return to work that afternoon. Coard says that he had no further communication with Jansen that day and that the “next day” Jansen “dropped around to pick up something”. Jansen did not return to the shop the following week.

Shortly before the end of the workday on the 7th, Coard instructed his office manager, Ms. Dale Pike, to prepare Jansen’s final paycheque and a record of employment. This latter document indicates that it was issued because Jansen “quit” (code “E”).

In addition to his own testimony, the employer submitted written statements--none under oath--from Ms. Pike and three other employees. These individuals did not testify before me (where their evidence could be tested by cross-examination) and thus their evidence is hearsay and of little, if any, evidentiary value. Further, the statements contain relatively little probative information. For example, Ms. Pike writes that she was not present when the final conversation between Coard and Jansen took place; one employee states only that “at no point did I hear [Coard] say that [Jansen] was fired”--quite a different thing from whether or not such a statement was in fact made; another employee’s statement similarly indicates that this employee was not present and could not hear the critical conversation between Coard and Jansen; only the third employee’s statement suggests that Jansen left saying “I quit” but this witness, as noted above, did not testify before me and his statement is not under oath.

Jansen’s evidence

Jansen alone testified in support of the Determination. He says that the genesis of his dispute with Coard can be traced to a luncheon meeting the two had on November 3rd, 1997 at which time Coard allegedly promised Jansen a \$1 per hour raise, a bonus and a \$50 per month gas allowance. Jansen was booked to take a vacation in the near future and Coard had hired a replacement to cover his duties while he was away.

On the morning of November 7th, Jansen’s truck was low on gas and so he asked Coard for a gas credit card to which Coard replied “what are you talking about?” and that the “gas allowance” would not take effect until January. Coard left and Jansen was upset with this turn of events as he understood that the changes to his compensation were to take effect immediately.

Before Jansen left for an early lunch he spoke with his “vacation replacement”--a gentleman only referred to as “Jim”, who had started work on November 3rd--and was informed that he (Jim) had been hired on a permanent, not on a temporary replacement, basis. Jansen also learned that Jim was earning more money. Jansen was very upset. When Jansen returned to the shop after lunch he immediately went to speak with Coard whereupon the two of them got into a heated argument. Jansen suggested that he was “going to take the next week off and then sort things out” [note, that Jansen was not scheduled to be on vacation during this period]. Coard replied that “if you leave now you can go into the shop, gather up your things and leave”. Jansen said he did just that--“I got some personal things and tools and left at approximately 2 or 3 P.M.”

Jansen maintains that he did not quit but “knew we wouldn’t settle it if I was mad”; he also asserts that he was not “physically intimidating” toward Coard. Jansen stated that shortly after arriving home, he received a telephone call from Ms. Pike advising him that “I could pick up my cheque before 4 P.M.”. In fact, Jansen did not return until the next Monday--he had no discussions with Coard that day and the only other communication between the two was a week or two later when Jansen phoned to demand severance pay.

The above evidence, and in particular the evidence of Jansen, can be examined from two perspectives. First, it could be said that Jansen's behaviour of taking an admittedly unauthorized leave of absence for the balance of the Friday--and his assertion that he did not intend to work at all the following week--could reasonably be interpreted as a quit. A valid "quit", as a matter of law, is determined by evidence of both an *intention to quit* and *behaviour* that is consistent with that espoused intention. I am satisfied that Jansen stated words to the effect that he was "outa' here" or that "I quit" but such an outburst, standing alone, would not have, in law, amounted to a valid quit. Here, however, Jansen's outburst and announced refusal to work for the balance of the day, or for the next ensuing week, was coupled with the removal of his personal belongings before leaving. Thus, in my view, both the requisite subjective and objective elements have been satisfied.

Second, given what I conceive to be Jansen's clear and unequivocal refusal to work (not just for the remainder of the day but for the next week as well)--a form of insubordination--the employer had just cause to terminate Jansen if one chooses to look upon the above facts as suggesting a dismissal or a "constructive dismissal" scenario. As was noted by the delegate in the Determination, at page 4, Jansen left work on the 7th without permission. The employer has the right to expect that his or her employees will perform their work obligations, and will follow reasonable and lawful work-related directions, and an obstinate refusal to do so will give the employer just cause for termination.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be cancelled.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal