

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 -

Citipage Communications Ltd.
("Citipage")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE No.: 2000/151

DATE OF HEARING: June 21, 2000

DATE OF DECISION: July 5, 2000

DECISION

OVERVIEW

Citipage Communications Ltd. (“Citipage” or “the employer”) has appealed, pursuant to section 112 of the *Employment Standards Act* (the “Act”), a Determination by a delegate of the Director of Employment Standards (the “Director”) dated February 15, 2000. The Determination orders Citipage to pay Glenna Spong compensation for length of service plus interest, a total of \$4,419.15.

Citipage, on appeal, claims that it should not have been ordered to pay compensation for length of service. According to Citipage, it is clear that Spong resigned her employment.

APPEARANCES

Appearing for Citipage

Terrance Cook, Owner

ISSUE TO BE DECIDED

The order to pay length of service compensation is at issue. Citipage has all along claimed that Glenna Spong quit.

FACTS & ANALYSIS

Citipage markets pagers. On or about the 30th of August, 1999, Terry Cook met with Spong and told her that the long term prospects of his company did not look good. Cook let it be known that unless things improved, he was going to be forced to lay off an employee and that it would be Spong rather than Mike Dufton, Citipage’s only other employee, that would be laid off. There was no mention of any date.

Spong attempted to arrange a second meeting but was initially unsuccessful in that regard. On the 13th of September, Spong met with Cook and the employment was at that point terminated. The delegate has concluded that while Spong left her job, she did not quit voluntarily: “Spong would likely have continued employment until her notice period was up or until she found another job” had it not been for an emotional state “brought on and left to grow by the employer”. He reasons that Cook could have and should have contacted Spong but did not; that he could have and should have met with Spong before the 13th but did not; and that he should have addressed her concerns but did not.

Citipage, on appeal, claims that it did not force Spong to quit. According to Cook, he was presented with a fait accompli. Spong had decided to leave her employment and that was all there was to it.

Cook on appeal has outlined to me why he did not meet with Spong until the 13th of September. He explains that he was simply unavailable as he was taking a long needed vacation with his family and that he did not have any sense that there was any pressing need to meet with Spong.

I am told by Cook that he had no plans to lay off Spong in what was, back in September of 1999, the near future. He says that the only reason that he told Spong that he might have to lay her off was so that she was given lots of time for looking for a new job.

I am told that when Cook was paged by Spong on the 10th of September, a Friday, he contacted her by telephone and was told by Spong that she had decided to leave her employment and in fact wanted to sever the employment relationship that very day. According to Cook, their conversation ended on the understanding that he would meet with her at work on Monday, the 13th.

I am told that Spong, on meeting Cook on the 13th, made it clear from the outset of the meeting that she was quitting and not open to any discussion of her staying on at Citipage. She had prepared two different paycheques and two difference ROEs, one set had Citipage paying her "severance pay" and other wages that were said to be owed, the second set did not include the severance pay. She demanded that Cook sign one set of documents or the other. He did that and Spong left paycheque and ROE in hand.

As matters have been presented to me, it appears that it was Spong that acted to terminate her employment, not the employer. Spong, in not attending the hearing set in the appeal, even though notified of it, has not given me any reason why I should disbelieve Cook, nor established that events are not as he describes and that there is another more credible explanation of matters and events. There is only an ROE to suggest that termination may have been at the hand of the employer but I am not satisfied that anything turns on that alone. While Cook signed an ROE giving layoff as the reason for Spong's leaving, a second ROE was then issued and it lists Spong as having quit. Moreover, Cook tells me that he did not know that the original ROE gave layoff as the reason for Spong's leaving.

In cases where an employee resigns his or her employment, the liability to pay compensation for length of service is discharged.

63 (3) The liability is deemed to be discharged if the employee

(a) is given written notice of termination as follows:

(i) one week's notice after 3 consecutive months of employment;

(ii) 2 weeks' notice after 12 consecutive months of employment;

(iii) 3 weeks' notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 weeks' notice;

(b) is given a combination of notice and money equivalent to the amount the employer is liable to pay, or

(c) terminates the employment, retires from employment, or is dismissed for just cause.

(my emphasis)

As matters are presented to me, Spong terminated the employment and Citipage's liability to pay her length of service pay compensation has been discharged.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination dated February 15, 2000, be cancelled.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal