

**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 -

Tri-West Tractor Ltd.  
("Tri-West")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** David Stevenson

**FILE NO.:** 96/448

**DATE OF DECISION:** September 26, 1996

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) of Determination of a delegate of the Director of the Employment Standards Branch (the “Director”), No. CDET 003156, dated July 10, 1996, by Tri-West Tractor Ltd. (“Tri-West”). The Determination concluded Tri-West had terminated the employment of an employee, Billie Begley (“Begley”), without cause and without notice and ordered length of service compensation paid to the employee in the amount of \$2,773.29. Tri-West says the Determination is wrong as it had cause to terminate Begley.

### ISSUE TO BE DECIDED

There are two issues in this appeal. The first is whether Tri-West has established it had cause to terminate Begley. The second is whether the length of service compensation is correct.

### FACTS

Begley was employed at Tri-West from April 25, 1994 as comptroller at a wage of \$36,000.00 per year. She was terminated on August 23, 1995. Tri-West says she was terminated because she committed a serious breach of confidentiality. During the investigative procedure the delegate of the director requested Tri-West to detail and support, with any available documentation, the allegations against Begley. They failed to do so. In making the Determination, the delegate cited three findings relevant to this appeal:

1. The employer produced no documented evidence to establish the claim of cause;
2. Verbal and written requests for documents establishing the reasons for termination were ignored by the employer; and
3. There was no evidence to validate the claim of breach of confidentiality.

In its appeal, Tri-West provided an outline of the events occurring at the time it terminated Begley. It attempted to justify its failure to provide this information to the delegate by stating the information had been given to their lawyers “on the understanding” it would be passed on to the delegate.

The information provided consists of a two page memo from the employer's accountant and does not confirm the reasons given for the termination of Begley. The areas of the memo addressing the critical allegations of breach of confidentiality state:

- "Billie advises . . . she has consulted another accountant and has been advised she may be party to a fraud and she has consulted with a lawyer at Berge and Company who advised her of the same."
- "Billie advises her concerns have been expressed to an accounting firm."
- "accounting firm consulted - I am not aware of who this is."

### **ANALYSIS**

It is unclear from the information provided what, if any, documents were allowed by Begley, as the employer alleges, to be seen by outside parties. Less clear is whether the "documents" are, as the employer says, confidential in nature. All the information really appears to establish is Begley sought advice from professionals about a situation she felt uncomfortable with. Even if I were to accept the employer's information I would not change the conclusion of the delegate that the employer had not established cause for termination.

But I also dismiss the appeal as it relates to cause on another ground. This Tribunal will not allow appellants to "sit in the weeds", failing or refusing to cooperate with the delegate in providing reasons for the termination of an employee and later filing appeals of the Determination when they disagree with it. An appeal under Section 112 of the *Act* is not a complete re-examination of the complaint. It is an appeal of a decision already made for the purpose of determining whether that decision was correct in the context of the facts and the statutory provisions and policies. The Tribunal will not necessarily foreclose any party to an appeal from bringing forward evidence in support of their case, but we will not allow the appeal procedure to be used to make the case that should have and could have been given to the delegate in the investigative process. It rings hollow to cast the blame for the failure of Tri-West to respond to the inquiries of the delegate onto its legal counsel. Legal counsel is the agent for Tri-West. Its failure is Tri-West's failure.

The appeal on the issue of cause is dismissed.

The Determination was issued in the amount of \$2773.29. The Determination states, in part, “the amounts payable are also set out in the schedule”. The schedule calculates the amount owing as \$1,091.49, inclusive of interest. That is a significant discrepancy. Based on the length of service of Begley, two weeks compensation would be payable for a termination without cause. On that basis an amount of \$1091.49 is the correct calculation. The Determination will be varied to show that amount as payable.

**ORDER**

Pursuant to Section 115 of the *Act*, I order Determination No. 003156, dated July 10, 1996, varied to show the amount payable to Begley as \$1091.49. In all other respects the Determination is confirmed.

**David Stevenson  
Adjudicator  
Employment Standards Tribunal**