

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 -

Creative Spirit Communications Inc.
("Creative")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE No.: 2000/209

DATE OF HEARING: June 23, 2000

DATE OF DECISION: July 20, 2000

DECISION

OVERVIEW

Creative Spirit Communications Inc. (“Creative” or “the employer”) has appealed, pursuant to section 112 of the *Employment Standards Act* (the “Act”), a March 1, 2000 Determination by a delegate of the Director of Employment Standards (the “Director”). The Determination calls for Creative to pay Victoria Klassen one week’s compensation for length of service plus vacation pay and interest.

Creative, on appeal, claims that it should not be ordered to pay compensation for length of service. According to Creative, it did not terminate Klassen, she quit.

APPEARANCES

Dean Landstad	Creative’s owner
Melissa Moskal	Witness for Creative
Victoria Klassen	On her own behalf

ISSUE TO BE DECIDED

At issue is the matter of how Klassen’s employment came to be terminated. What I must ultimately decide is the matter of whether the employer has or has not shown that the Determination should be cancelled or matters referred back to the Director for reason of an error in fact or law.

FACTS

Creative Spirit Communications is a web site designer. Victoria Klassen was employed by Creative and she decided to quit. On Wednesday, September 8, 1999, she told Dean Landstad, Creative’s owner, that she had decided to resign. According to Klassen, she gave her employer two weeks’ notice.

Landstad claims that Klassen did not give him notice as claimed but led him to believe, from the tone of her voice and the nature of her many complaints with his style of management, that she wanted to quit right away.

Melissa Moskal, Creative’s Publications Co-ordinator, was present when Klassen announced that it was her intention to quit. As Moskal remembers what was said that day, Klassen neither indicated a plan to resign in two weeks, nor went so far as to state what would be last day of work. Moskal tells me that she was also left with the impression that it was Klassen’s plan to quit as soon as possible.

Klassen advised the Director's delegate that on leaving her meeting with Landstad and Moskal, she told another of Creative's employees, Lisa Dzatko, that she had just given notice and was resigning in two weeks. Dzatko confirmed that on being interviewed by the delegate and I accept that as fact. Landstad, on appeal, claims that Dzatko on the 13th said that she was not aware that Klassen was quitting but it is a claim which is devoid of support.

Klassen's last day of work was Tuesday, the 14th of September, 1999. That was her next scheduled day of work. Klassen, prior to the 8th, had arranged to have the 9th, 10th and 13th off.

On the 14th, Klassen completed paperwork and she spent some amount of time going over a just completed project with Moskal. According to Klassen, Moskal advised her at the end of the day that her services were no longer required. Moskal denies terminating Klassen. As she describes what happened, it was her clear understanding that the 14th was to be Klassen's last day of work and, at the end of that work day, she thanked Klassen for coming in and for all of her work at Creative. When asked to explain how she came to understand that Klassen was quitting on the 14th, Moskal tells me that she just could not imagine that Klassen wanted to work another day.

ANALYSIS

Where an employee resigns his or her employment, the employer's 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)

Contrary to what Creative appears to believe, Klassen could have decided to quit at any time. Notice of resignation is not something which is required by the *Act*.

An employer may act to terminate a person's employment at any time but an employer may not force an employee to resign, nor may an employer deem that an employee has quit. It is the employee's right to resign. And unless there is plain, clear evidence to show that the resignation is voluntary, termination will be considered to have been at the hand of the employer.

It is clear in this case that Klassen did announce that it was her plan to quit. But it is not enough that an employee merely announces that it is his or her plan to resign. As has been stated elsewhere,

... the uttering of the words "I quit" may be part of an emotional outburst, something stated in anger, because of job frustration or other reasons, and as such it is not to be taken as really manifesting an intent by the employee to sever his employment relationship.

[Re *University of Guelph*, (1973) 2 L.A.C. (2d) 348]

The Tribunal accepts that there are two parts to quitting, a subjective and an objective element. It must be shown that the employee formed the intention to quit (the subjective part of resigning) and that he or she then acted or conducted herself or himself in a way which is inconsistent with continuing the employment (the objective element of quitting).

As matters have been presented to me, there is no one claiming that Klassen went to so far as to announce that it was her plan to quit on the 14th, and that she then acted to carry out that plan. According to the employee, she gave two weeks' notice and her employment was then cut short. On the other hand, what Landstad and Moskal say is that Klassen made no mention of what was to be the date of her departure. They tell me that they assumed, from the tone of Klassen's voice and the complaints that she had with Landstad's style of management, that it was Klassen's plan to leave as soon as possible. The delegate has accepted that matters are as Klassen describes and, as matters have been presented to me, I find that it not been shown that he is in any way wrong on the facts, nor is it shown that he is wrong in law.

The parties in this case present two rather different versions of the facts. And I, like the delegate, find myself inclined to believe Klassen's version of events over that of the employer. The former rings of authenticity. There are no loose ends. As she presents matters to me, she does so without hesitation or confusion. On observing her in the circumstances of a hearing, I am led to believe that it is unlikely that she became flustered, on announcing that it was her plan to resign, and/or forgot to say when it was that she wanted to quit. And only her version of events is consistent with what Dzatko is reported to have said on being interviewed by the delegate. Landstad, on the other hand, tells me is that he learned in conversing with Klassen, on the 8th, that she was not quitting that very day and was going to come in for work on the following Tuesday. If, as he says, Klassen had not indicated what was to be the date of the quit, then it is likely that Landstad would have then asked when she was quitting. He would have wanted to know that. Moreover, I believe that, had Klassen really wanted to quit right away, the employer's claim, that she would most likely have done just that, and quit on the 8th, not the 14th. Quitting on the 8th would have allowed her to make a clean break with her employer. If it was really Klassen's intention to quit right away, it is unlikely that would then prolong quitting and agree to work one last day after taking a break of five days.

Moskal's testimony mirrors that of her employer. I have decided that nothing should turn on her testimony alone. She is not a completely disinterested observer but a current employee who enjoys a supervisory role within Creative and, therefore, a person who is open to direct and indirect pressure from her employer.

I am satisfied that Klassen probably did say that it was her plan to resign in two weeks. But even if the facts are as the employer claims, it is clear to me that termination was at the hand of the employer. The employer's claim is that it was reasonable to assume, from the tone of Klassen's voice and her many complaints with Landstad's style of management, that it was Klassen's plan to quit as soon as possible. It is not. It is, first of all, the right of the employee to decide when a resignation will take effect. That date is not something which the employer may assume or decide for an employee. Secondly, it is simply not possible to tell from the tone of a person's voice, and/or the complaints that a person may have, when it is that they are planning to quit. A person may announce that they are quitting in the most strident of terms or present his or her employer with a long list of the most serious of complaints and yet have no intention of quitting that day, at any time soon or, in some cases, even at all.

In summary, the employer has not shown me that its former employee quit and that the Determination dated March 1, 2000 is therefore wrong. Creative Spirit Communications must pay Victoria Klassen length of service compensation and other wages as set out in the Determination.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination dated March 1, 2000, be confirmed in the amount of \$372.10 and to that I add whatever further interest has accrued pursuant to section 88 of the *Act*.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal