

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 -

Modern Auto Plating Ltd.
("Modern")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE NO.: 98/154

DATE OF HEARING: May 29, 1998

DATE OF DECISION: June 18, 1998

DECISION

APPEARANCES

Guerino Rasman	President of Modern Auto Plating
David J. Ledlin	Witness
Alexis Rawlings	The Complainant

OVERVIEW

This appeal is by Modern Auto Plating Ltd. (“Modern”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) and it is against a Determination of the Director of Employment Standards (the “Director”) dated February 17, 1998. The Determination is that Modern owes Alexis Rawlings compensation for length of service.

ISSUE TO BE DECIDED

The issue is whether or not Modern owes compensation for length of service.

FACTS

Modern Auto Plating is in the bumper exchange and recycling business. Alexis Rawlings began work for Modern on January 16, 1995. She worked as a clerk on the order desk. Her last day of work was February 7, 1997.

Rawlings had a plan to quit her job and on January 24, 1997, she handed Guerino Rasman, President and Owner of Modern, a letter of resignation, dated that day, which states, “I will not be able to work after February 21, 1997”. That led to discussion of what would be her last day. According to Rawlings, Rasman said that she could leave right then but she expressed a desire to work right through to the 21st of February. Rasman said that he only needed her to stay for another two weeks. There is no evidence showing that the two reached agreement on the date of departure. But Rasman had it in his mind that she was leaving in two weeks, which is the 7th of February. After his meeting with Rawlings, Rasman told David Ledlin, Manager of the order desk, that Rawlings was quitting and that her last day would be the 7th. Rasman also told his payroll staff that she was quitting and he told them to make out her final cheque for the 7th.

ANALYSIS

It is Section 63 (3) of the *Act* that sets out how an employer's liability for compensation for length of service can be discharged.

- (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)

Had Modern, on the 24th of January, given Rawlings written notice that she would be terminated on 7th of February, its liability to pay compensation for length of service would have then been discharged at the point of termination. But no written notice was given. Verbal notice may have been given but that is insufficient for the purpose of discharging liability to pay compensation for length of service.

Rasman says that Rawlings agreed to go on the 7th of February and he points to what he said to Ledlin and his instruction of payroll staff to prepare 'her final cheque'. But it is entirely possible that he may only have misunderstood Rawlings. Or Rasman may have decided, seeing as she was leaving the company anyway, that he would just move up the date of her departure. Comments to Ledlin and payroll staff simply do not prove that Rawlings agreed to leave on the 7th.

It is not open to the employer to deem that an employee has quit or is quitting. The act of resigning one's employment is personal to the employee and the evidence must be clear and unequivocal that the right to quit has been voluntarily exercised. In deciding whether the latter is the case, it must be shown that the employee not only formed the intention to quit but acts or demonstrates conduct which confirms that he or she has quit, or which is consistent with an intention to resign one's employment, the taking of another job for example [*Burnaby Select Taxi Ltd.*, BCEST D091/96].

Rawlings expressed an intention to quit, that is clear. But it is far from clear that she either agreed to quit on the 7th, or that she just quit on the 7th. The absence of plain, clear evidence that Rawlings voluntarily resigned her employment on that day leads me to conclude that she was in fact terminated by Modern on that day. As that was without notice or cause, she is owed two weeks' compensation for length of service.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination dated February 17, 1998 be confirmed in the amount of \$1,008.42, together with whatever further interest has accrued pursuant to Section 88 of the *Act*, since the date of issuance.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal