

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 -

Matt Miller Transport Ltd.
("Miller Transport" or the "Employer")

– and –

Matthew R. Miller
a Director or Officer of Matt Miller Transport Ltd.

– of a Determination issued by –

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE No.: 2000/260 and 2000/261

DATE OF HEARING: June 23, 2000

DATE OF DECISION: July 18, 2000

DECISION

APPEARANCES

Mr. Matthew R. Miller on behalf of the Employer and himself

Mr. Brian Irvine on behalf of himself

FACTS AND ANALYSIS

This is an appeal by the Employer and Mr. Miller (“Miller”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against two Determinations of the Director of Employment Standards (the “Director”) issued on March 16, 2000. The Determination against the Employer concluded that Mr. Irvine did not quit his employment with the Employer and, in the result, was owed \$6,218.76 on account of compensation for length of service. The Determination noted, and this was not in dispute at the hearing, that Irvine had worked for the Employer as a warehouseman and driver between September 1990 to October 1999. He was earning an hourly rate of \$18.20. According to the Determination against Miller in his capacity as director/officer, the amount of liability was similarly \$6,218.76.

I first turn to the director/officer Determination. The appellant has the burden to show that the Determination is wrong. Miller did not dispute the findings that he was a director/officer and he did not dispute the calculation of the personal liability. I dismiss the appeal of this Determination.

Miller says the Determination is “unfair.” He explains the circumstances as follows. His company provided trucking services to Federated Co-operative Ltd. (“Federated”) for a number of years. Miller had wanted to sell the business, but was told by Federated that he could not sell his contract with it. Accordingly, he decided to close the business and sell the assets. He gave one month’s notice to Federated as per the contract. Miller, acknowledging that he did not give the employees written notice of termination of employment, says that he, nevertheless, gave them, including Irvine, verbal notice on September 13, 1999. Irvine disagrees, he says that Miller told him on September 13 that “he [the Employer] quit Federated” and that “there is a chance they’ll take you and Linda [Batiuk] on.” Irvine does not agree that Miller terminated his employment on that date. He also says he did not know what was going to happen between the Employer and Federated. From the evidence presented at the hearing, there does not seem to be a dispute that on October 13, 1999, Irvine received his Record of Employment at the end of the work day. This document indicated “shortage of work.” Irvine did not come to work the next day. This, says the Employer, means that he quit. There is no dispute that Irvine immediately following applied for a position with the company that took over the work from the Employer. Miller says that there were no employees working for the Employer after October 13, 1999.

In his written material to the Tribunal, Miller says that the office manager, Linda Batiuk, conspired with Irvine with respect to the Record of Employment. There was no evidence to support that contention and I do not propose to deal with it any further.

I agree with the delegate. In my view, there is nothing before me to support an argument that Irvine quit his employment. He left his employ because he was given his ROE which indicated layoff due to shortage of work. The Employer ceased to have any employees after October 13, 1999 and was no longer operating.

Section 63(3) of the *Act* require that an employer give written notice of termination. It is precisely for the reasons giving rise to this proceeding that the *Act* requires written notice. The Employer did not do that. As I do not accept the Employer's argument that Irvine quit, I agree with the conclusions of the delegate that Irvine is entitled to compensation for length of service. The delegate found that he was entitled to 8 weeks, and I agree. In the result, I uphold the Determination against the Employer, as well.

ORDER

Pursuant to Section 115 of the *Act*, I order that Determinations in this matter, dated March 16, 2000, be conformed.

Ib Skov Petersen
Adjudicator
Employment Standards Tribunal