

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 -

479866 B.C. Ltd.
Operating as Mac's Convenience Store
("Employer")

- of a Determination issued by -

The Director Of Employment Standards
(The "Director")

ADJUDICATOR: Richard S. Longpre

FILE NO.: 97/182

DATE OF HEARING: June 16, 1997

DATE OF DECISION: June 24, 1997

DECISION

APPEARANCES

Mr. Stephen Wong for 479866 B.C. Ltd. Operating as Mac's Convenience Store
Avatar S. Kandola on his own behalf

OVERVIEW

This is an appeal by 479866 B.C. Ltd. Operating as Mac's Convenience Store ("Employer"), pursuant to Section 112 of the *Employment Standards Act* (the "Act") of the Determination dated March 13, 1997. The Determination, issued by the Delegate of the Director, found that the Employer contravened Section 63 of the *Act*. In filing his complaint Avtar Kandola ("Kandola") with Employment Standards, Kandola provided the Delegate with a copy of his doctor's certificate that indicated that he was incapable of working from October 25, 1996 to December 7, 1996. The Determination concluded that Kandola was not recalled him from layoff. He was entitled, therefore, to two weeks severance pay plus interest.

The Delegate directed the Employer to cease contravention of Section 63 of the *Act*. He further directed the Employer to pay Kandola, including interest, \$1,222.36.

ISSUE TO BE DECIDED

The issue is whether the Employer terminated Kandola for just cause.

ANALYSIS

During the hearing, each party expressed their version of events. There were significant differences. On October 24, 1996, Kandola was unable to work as scheduled. He had been in a car accident. His absence went on for some weeks. The Employer reviewed subsequent events in some detail. He said Kandola never kept him informed as to when he was returning to work. The Employer finally hired someone else. Kandola explained that he kept the Employer informed throughout his absence. He was ready to return to work in early December 1996.

At the outset of the hearing, I explained that in filing an appeal the applicant must show that the Determination is flawed in either the application of the *Act* or in the evidence relied upon in the Determination. The Employer filed the appeal and, therefore, had to prove its case. The Employer did not meet the onus to prove his case. An interpretation of the *Act* is

not at issue in this case. The issue in this appeal was the evidence relied on in the Determination.

In evaluating evidence, an adjudicator must decide, on the balance of probabilities, whose evidence should be preferred. Both the Employer and Kandola provided me with credible explanations of events. Both parties were able to tie specific conversations in with specific events. I asked questions that both sides answered reasonably well.

The Employer could not convince me that Kandola was not telling me the truth. The hearing did not cast doubt on Kandola's version of events. Kandola's version of events made sense. During the hearing, the Employer did not ask Kandola any questions that raised doubt on Kandola's version. I had no reason to doubt Kandola's explanation that he was off work due to his injuries. He was not permitted to work when he was ready to return to work. The Employer did not establish that it had just cause to terminate his employment. There is no reason to cancel the Delegate's Determination.

ORDER

Pursuant to Section 115 of the *Employment Standards Act*, the Determination dated March 13, 1997 is confirmed.

Richard S. Longpre
Adjudicator
Employment Standards Tribunal