

An appeal

- by -

SD-40 Ventures Ltd., operating as Interior Powder and Paint
("IPP")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: David B. Stevenson

FILE No.: 2001/149

DATE OF DECISION: May 24, 2001

DATE OF DECISION: June 7, 2001

DECISION

APPEARANCES:

on behalf of SD-40 Ventures Ltd.: Norm Cross

on behalf of the individual: In person

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by S-40 Ventures Ltd. operating as Interior Powder and Paint (“IPP”) of a Determination that was issued on January 31, 2001 by a delegate of the Director of Employment Standards (the “delegate”). The Determination concluded that IPP had contravened Part 8, Section 63 of the *Act* in respect of the employment of Robin Pfeifle (“Pfeifle”) and ordered IPP to cease contravening and to comply with the *Act* and to pay an amount of \$940.23.

IPP disagrees with the Determination. IPP says that Pfeifle quit his employment and was not entitled to compensation for length of service.

ISSUE

The issue is whether IPP was discharged from its liability to pay Pfeifle length of service compensation under Section 63(3)(c) of the *Act*.

THE FACTS

The evidence provided by Mr. Cross, the owner of IPP, and Pfeifle is consistent with the findings of fact made in the Determination, which listed the following findings:

- On Friday, October 13, 2000, Mr. Cross requested Mr. Pfeifle to work past his regularly scheduled quitting time of 3:30 p.m. in order to redo work so that parts would be available for delivery the next day.
- October 13 was a pay day.
- Mr. Pfeifle indicated that he had to go to the bank to deposit his cheque. Mr. Montemurro, who overheard the conversation, recalls Mr. Pfeifle saying this.
- The argument escalated and Mr. Pfeifle said words to the effect of “I don’t need this job.”

- Mr. Cross said words to the effect of “there’s the door, take a hike, go find another job.” Mr. Pfeifle left the worksite. Mr. Cross made no attempt to dissuade him from doing so.
- Mr. Pfeifle called on his next scheduled work day, asking for his severance pay.
- Mr. Pfeifle was paid at a rate of \$11.50 per hour and worked a regular 40 hours work week.

The evidence added the following points to those findings of fact:

- The conversation on Friday, October 13 was heated.
- Pfeifle’s next scheduled work day was the Monday.
- When he asked Mr. Cross for his severance pay, Mr. Cross said, “I didn’t fire you; in my opinion you quit and I am not responsible for severance”.
- Pfeifle replied to the effect that “if I knew I wasn’t fired, I would have come in” and Mr. Cross responded with “it’s too late” or “it’s too bad”, told Pfeifle he was busy and hung up the phone.
- Pfeifle called several more times to Mr. Cross’ secretary, asking for his Record of Employment.

ARGUMENT AND ANALYSIS

Mr. Cross, on behalf of IPP, argued that it was Pfeifle who said, “I don’t need this job”, made the choice to leave and subsequently failed to show up for work on Monday. There was no reason for either leaving or failing to show up for work and it must be concluded that he quit.

Pfeifle argued that he did not quit. He was shown the door and told to “take a hike” by Mr. Cross. When he told Mr. Cross on Monday morning that if he knew he wasn’t fired he would have showed up for work, Mr. Cross said it was too late.

The relevant provision of the *Act* is subsection 63(3)(c), which states:

63. (3) The liability is deemed to be discharged if the employee
- (c) terminates the employment, retires from employment, or is dismissed for just cause.

In *Re Emond and Kirrmaier (c.o.b. as BJ's Restaurant and Rentals)*, BC EST #D182/00, the Tribunal said the following about length of service compensation provided in Section 63 of the *Act*:

Length of service compensation is, from the employee's perspective, a statutory benefit earned with continuous employment. It is a minimum statutory benefit. From the employer's perspective, it is a statutory liability that accrues to each employee with more than 3 consecutive months of employment. While length of service compensation is often referred to as “termination” or “severance” pay, it is related to termination only to the extent that a termination of employment, actual or deemed, triggers the benefit or liability, depending on the perspective. Subsection 63(3) identifies three circumstances where the statutory liability of the employer to pay length of service compensation is deemed to be discharged: first, if the employee is given written notice of termination equivalent to the employer's statutory liability to the employee; second, if the employee is given a combination of notice and compensation equivalent to the employer's statutory liability to the employee; and third, if the employee terminates the employment, retires from employment or is dismissed for just cause. It should be pointed out that while the *Act* uses the phrase “terminates the employment” in paragraph 63(3)(c), that phrase captures circumstances that are more commonly described as quitting or abandoning employment.

There is no dispute that Pfeifle’s employment was terminated. There is also no dispute that Pfeifle was entitled to the length of service compensation and IPP was liable to pay length of service compensation unless IPP was discharged from its statutory liability under subsection 63(3)(c) of the *Act*.

The question in that regard is whether Pfeifle quit his employment. There is no issue about whether he retired from employment or was dismissed for just cause. In order to succeed, IPP must demonstrate that the Director was wrong to conclude Pfeifle did not quit his employment.

In deciding whether an employee has terminated, or quit, the employment, the Tribunal has applied the following approach, which was formulated in *Re Burnaby Select Taxi Ltd.*, BC EST #D091/96:

The right to quit is personal to the employee and there must be clear and unequivocal facts to support a conclusion that this right has been voluntarily exercised by the employee involved. There is both a subjective and an objective element to a quit: subjectively, the employee must form an intent to quit employment; objectively, the employee must carry out an act inconsistent with his or her further employment. The rationale for this approach has been stated as follows:

. . . 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

There is no reason to disturb the Determination. IPP has the burden of showing the Determination was wrong because the Director should have concluded Pfeifle quit his employment on October 13, 2000. The facts do not support such a conclusion and IPP has not met its burden. The events of that afternoon were the result of a heated exchange between Mr. Cross and Pfeifle and cannot be taken as manifesting an intent on the part of Pfeifle to quit. Pfeifle’s comment to Mr. Cross on the following Monday that he would have showed up for work if he knew that he wasn’t fired indicates that he had not intended to quit on the Friday afternoon. The act of leaving the workplace on Friday, October 13 and not returning the following Monday, does not, in the circumstances support a conclusion that he intended to quit his employment. I agree with the argument made by Pfeifle that when Mr. Cross pointed to the door and told him to “take a hike”, his complying with that order is not an indication that he made the choice to leave or that he was quitting.

The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination, dated January 31, 2001, in the amount of \$940.23, be confirmed, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal