

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 -

Jason Powell
(" Powell or employee ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Paul E. Love

FILE No.: 2000/174

DATE OF HEARING: June 29, 2000

DATE OF DECISION: August 21, 2000

DECISION

APPEARANCES:

Jason Powell	on behalf of himself
William Powell	on behalf of Coval Security Services Ltd.
E. (Beth) Lyle	on behalf of the Director of Employment Standards

OVERVIEW

This is an appeal by Jason Powell of a Determination, dated February 4, 2000. In the Determination the Delegate found that Jason Powell quit his employment with Coval Security Services Ltd., and that Jason Powell was therefore not entitled to compensation for length of service. The Delegate also found that Jason Powell was not entitled to overtime and statutory holiday pay, and while an appeal was filed on this matter, Mr. Powell abandoned these issues at the hearing. This case involved the assessment of credibility, and I confirmed the Determination.

ISSUE

Did the Delegate err in determining that Jason Powell quit his employment?

THE FACTS

Jason Powell worked for Coval Security Service Ltd. ("Coval") from May of 1995 to October 1, 1999. Coval is in the business of providing security guards, patrol and alarm services. Jason Powell is the son of the owner William Powell. Jason Powell claims that he was terminated on or about October 1, 1999. Coval says that he resigned from his employment on that date. Jason Powell claims compensation for length of service.

There was a verbal altercation between the parties on October 1, 200. Each party has a different version of what occurred that date. It is clear to me that there is hostility between the parties, but it is not my role as an adjudicator to determine that basis for the hostility. It is my view that the evidence of William Powell is to be preferred over the evidence of Jason Powell. I have considered and applied the test in *Faryna v. Choney*. I was not impressed by the allegations presented by Jason Powell, in particular that certain documents were falsified by William Powell. This was an unwarranted and groundless allegation. The Employer gave evidence in manner that was balanced. I reject Jason Powell's evidence.

I note that Jason Powell was critical of the manner in which the Delegate conducted the investigation. Having reviewed the evidence in this case, the Determination, and heard from the parties, I have no hesitation in concluding that Jason Powell's complaints about the investigation are groundless.

The facts concerning October 1, 2000 are as follows. At approximately 9:30 a.m. Jason Powell answered a phone call. It was clear to William Powell that Jason Powell had an attitude problem on the phone. William Powell called Jason Powell into his office to apply corrective discipline. Jason Powell indicated that he wished to work outside management. William Powell indicated that this was fine but there would be a reduction in pay if he chose to do so. Jason Powell told William Powell to “fuck himself”. William Powell pulled out a ledger book, with the intention of inquiring how Jason Powell would repay the loan to the company.

Jason Powell indicated that he was going home. I note that he had commenced his shift at 6:00 a.m. and was scheduled to work until 12:00 noon.

William Powell stated if that was how Jason felt he wanted his keys back. Jason Powell threw the keys on the floor.

William Powell phoned Jason Powell Monday October 4th, in the morning, about coming to work. When William Powell asked Jason Powell if he was coming back to work, Jason Powell said he was sleeping, he said he was going to play hockey, laughed and hung up. William Powell phoned Jason Powell a “couple of times” and did not connect with Jason Powell. He held the job open for Jason Powell to return for several months. Jason Powell did not return to his employment. He confirmed at this hearing that he had no intention of returning to work after the altercation of October 1st.

Sandy Moore a former, employee of Coval, was present in the office on the date of the event. She did not hear everything that transpired between William Powell and Jason Powell. She overheard William Powell say, “if that’s the way you want to be, I want the keys back”. She testified that both parties were upset.

ANALYSIS

The burden is on the appellant to demonstrate an error in the Determination such that I should vary or cancel the Determination. This is a “quit/fire” case, where the evidence consists of the employer and employee in a private meeting. This case involves the assessment of the credibility of witnesses. The Director’s Delegate was in the best position to assess this matter, as she investigates at a time closer to the events. Particularly persuasive to the Delegate was the fact that the employer was cooperative and presented the case in a reasonable fashion. Jason Powell did not cooperate in the investigation. The Delegate also found persuasive that Jason Powell did not cooperate in the investigation. The Delegate also found persuasive that William Powell attempted on numerous occasions to get Jason Powell to return to work. The actions of the parties are more consistent with Mr. Jason Powell having quit his employment, than William Powell having fired an employee. Having heard the witnesses, and particularly having no hesitation in preferring the evidence of William Powell over Jason Powell, I find that the appellant has not demonstrated any error in the Determination.

At the hearing of this appeal, Jason Powell abandoned any claim for overtime pay and statutory holiday pay, and therefore it is unnecessary for me to consider these issues in this decision.

ORDER

Pursuant to Section 115 of the *Act*, I confirm the Determination made February 4, 2000.

Paul E. Love
Adjudicator
Employment Standards Tribunal