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-

Collectrite Services Kamloops Ltd.

("Collectrite")

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 97/421

DATE OF DECISION: July 25th, 1997

DECISION

OVERVIEW

This is an appeal brought by Collectrite Services Kamloops Ltd. ("Collectrite" or the "employer") pursuant to section 112 of the *Employment Standards Act* (the "*Act*") from a Determination issued by the Director of Employment Standards (the "Director") on May 5th, 1997 under file number 81064. The Director determined that Collectrite owed its former employee, Donald Peel ("Peel"), the sum of $370.12 on account of one week's wages (including vacation pay and interest) as compensation for length of service payable pursuant to section 63(1) of the *Act*.

FACTS

Peel was employed as a collection agent with Collectrite from May 24th, 1996 until his termination, allegedly for cause, on October 11th, 1996.

Peel submitted a letter of resignation on October 10th, 1996; his resignation was to take effect on October 31st, 1996. The next day, October 11th, the employer terminated Peel and issued a Record of Employment indicating that Peel had "quit". The employer did not allow Peel to work out his notice period, nor did the employer give Peel one week's notice of his termination or the equivalent amount as termination pay.

The employer now says that it had just cause to terminate Peel based on Peel's conduct at work on October 11th. Specifically, the employer states that on October 11th Peel was not carrying out his usual duties and thus "it was decided that Mr. Peel was obviously not going to 'work' out his notice and therefore it was decided that he be terminated with cause on October 11, 1997 at approximately 3:00 P.M." (see Memorandum dated May 26th, 1997 attached to the employer's Notice of Appeal).

ISSUE TO BE DECIDED

Did the employer have just cause to terminate Peel?

ANALYSIS

The employer acknowledges that Peel submitted a written notice of resignation on October 10th, 1996, to be effective as at October 31st, and that this resignation was accepted by Collectrite. However, and

as noted above, Peel was terminated the very next day after submitting his resignation allegedly because he was refusing to carry out his employment duties.

Peel was issued a Record of Employment ("ROE"), dated October 11th, 1996 and signed by Collectrite's President, Rod MacDonald, which indicates that the ROE was issued because Peel "quit" (*i.e.*, code "E" on the form) not because he was dismissed (code "M" on the form). Apparently, Peel subsequently filed a claim for employment insurance and an oral hearing was held before a three person panel of the Board of Referees on December 16th, 1996. In a written decision issued that same day Peel's claim was dismissed by the Board of Referees. Peel attended the oral hearing as did three representatives from the employer, including Mr. MacDonald. Of particular interest is the following observation in the Board of Referee's reasons for decision (case no. KAM 185): "The claimant and the employer *both report that the claimant quit"*.

Thus, based on the foregoing evidence, it would appear that on October 11th, 1996, when the employer issued an ROE to Peel, and continuing at least until the middle of December 1996 when the Board of Referees' hearing was held, the employer's position was *not* that Peel was terminated for cause, but rather, that he quit. It appears to me that the employer, in defending Peel's complaint under the *Act* has simply, and somewhat disingenuously, trumped up a "just cause" allegation so as to avoid any liability to Peel for termination pay under section 63 of the *Act*.

In these circumstances, I conceive this appeal to be frivolous, vexatious, trivial and not brought in good faith and, in accordance with section 114(1)(c) of the *Act*, ought to be dismissed accordingly. Further, and in any event, I would dismiss Collectrite's appeal on its merits for the reasons set out in the Determination. At best, Peel's alleged conduct on October 10th would give the employer grounds to discipline (perhaps by a way of a verbal or written warning) but, in my view, the allegations made by the employer, even if true, do not constitute "just cause" for dismissal.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination issued by the Director in this matter, dated May 5th, 1997 and filed under number 81064, be confirmed as issued in the amount of $370.12 together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal