

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act

-by-

Ronald G. Wentz

(“Wentz”)

-of a Determination issued by-

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE NO.: 96/509

DATE OF DECISION: November 8th, 1996

DECISION

OVERVIEW

This is an appeal brought by Ronald G. Wentz (“Wentz”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from Determination No. CDET 003630 issued by the Director of Employment Standards (the “Director”) on August 12th, 1996. The Director determined that C & L Supply Ltd. (“C & L”) had not contravened section 63(2) of the *Act* (compensation pay for length of service) because Wentz had voluntarily quit his employment with C & L.

FACTS

Wentz was formerly employed by C & L as a small motor mechanic. It is clear from the evidence that for several months prior to November 1995, Wentz, while still an employee of C & L, was in a conflict of interest by reason of having established a competing business. In fact, for several months prior to November 1995, Wentz was carrying out repair work for at least one former C & L customer.

The matter came to a head on November 28th, 1995 when Mr. Jim Semkiw, the principal of C & L, presented a letter to Wentz in which Wentz was put on notice that he must “cease and desist” from operating the competing repair business or face immediate termination for cause. The November 28th letter contains a signature line evidencing Wentz’s “receipt and understanding of this warning”. Wentz refused to sign.

According to Wentz’s lawyer’s letter to the Canada Employment Centre (Campbell River office) of January 25th, 1996, and other submissions made by Wentz, or on his behalf, Wentz received the “cease and desist” letter at about 3:30 P.M. on November 28th and left work that day at about 4:30 P.M. Apparently, Wentz wished to consult a lawyer before signing the letter but could not obtain an appointment to see a lawyer that afternoon. Later on in the evening of the 28th, Wentz telephoned Semkiw and was told (or at least Wentz understood) that he must sign the letter or face termination. Assuming he was dismissed, Wentz failed to report for work on November 29th and on November 30th he attended to pick up his final paycheque and Record of Employment (the latter document stating that Wentz had “quit”). I would parenthetically note that Wentz subsequently challenged, unsuccessfully, the decision of Human Resources Development Canada to deny him unemployment insurance benefits.

ANALYSIS

The material filed by Wentz in support of his appeal does not clearly set out a sound legal basis for challenging the Director’s Determination other than to assert that the Reason Schedule to the

Determination contains some “inaccuracies and misleading statements”. However, taking Wentz’s case at face value, I am still driven to the conclusion that this appeal must fail.

Even if Wentz did not quit his employment with C & L (and the evidence overwhelmingly suggests that he did), Wentz would still have to show (given that he is the appellant in these proceedings) that the employer did not have just cause to terminate him. However, the fact of establishing a competing business coupled with his apparent refusal to close down that competing business gave the employer just cause to terminate Wentz. Indeed, given that Wentz was in a clear conflict of interest on November 28th, the employer had just cause to dismiss Wentz without giving him the benefit of one “last chance” (i.e., by signing the November 28th letter). However, Wentz was offered one last chance and he simply refused to take it.

ORDER

Pursuant to section 115 of the *Act*, I order that Determination No. CDET 003630 be confirmed.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal