

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act* S.B.C. 1996, C. 38

- by -

482212 B.C. Ltd. Operating  
as Pet World  
("482212")

- of a Determination issued by -

The Director Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	Alfred C. Kempf
<b>FILE NO:</b>	96/493
<b>HEARING DATE:</b>	October 31, 1996
<b>DATE OF DECISION:</b>	November 15, 1996

## DECISION

### OVERVIEW

This is an appeal by 482212 BC Ltd. ("482212") pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination of the Director of Employment Standards (the "Director") issued on July 31, 1996. In this appeal 482212 claims that no severance pay is owed to David K. Sessford ("Sessford").

At the hearing, Bill Durling ("Durling") attended for 482212 and Sessford attended on his own behalf. Donna Miller was in attendance on behalf of the Director.

At issue was whether 482212 had just cause for the dismissal of Sessford.

### FACTS

Sessford was a part-time employee of 482212's pet store at the time of his dismissal on November 12, 1995. At the time he was 16 years of age. Sessford had worked for 482212 for several months. Sessford was a bright, capable and trustworthy employee according to the evidence of Durling. However, Durling also testified that he had occasion to warn Sessford about performance concerns which will be referred to later in this decision.

The dismissal seems to have come about primarily due to an incident involving the death of a large number of fish housed in aquariums within 482212's premises.

The fish expired during a vacation by Durling. Before leaving, Durling left the store manager in charge, although it was expected that Sessford would also work during Durling's absence. There was much evidence speculating as to the cause of the death of the fish. Durling's explanation was that the fish had died due to an incorrect backflushing of the filtration system for the aquariums. He testified that employees, including Sessford, had been warned not to touch the filtration and backflushing systems of the aquariums. Durling testified that only he and the store manager were to have any involvement with this equipment. Sessford denied having received any such warning.

Sessford testified that upon reporting for work one morning during Durling's vacation he noticed that the tanks looked bad and that there were a few dead fish. He believed that this was caused by inattention by the store manager. Sessford testified that he set out to try and resolve the problem. In his attempts to save the fish he backflushed the filter system. He said he did it properly. He testified that he knew how to backflush the filter system although that was not a regular part of his job. He says that he had been invited by Durling's wife to attend a demonstration of the backflushing of the filter system.

When Durling returned from vacation and found all of his fish dead he asked for an explanation from the store manager and Sessford. Although the store manager did not give evidence, it is common ground that he said he had done nothing wrong and that other employees had caused the problem. Durling testified that he spoke to Sessford who denied touching the filtration system.

Sessford testified that when questioned he told Durling that he was not at fault for the death of the fish. He said that the issue of whether he backflushed the system did not specifically come up. He also maintains that he did not say that he did not touch the filtration equipment.

Durling decided that the store manager was responsible for the death of the fish and as result terminated his employment. Sometime afterward he formed the conclusion that Sessford had not told him the truth about his involvement with the filtration equipment. Durling was not able to provide any direct evidence supporting his suspicions. He testified that Sessford was confronted on November 12th about whether he had earlier told the truth about what had happened. Durling says that Sessford admitted he had touched the filtration equipment and had lied about it earlier. As result Durling dismissed Sessford for touching the equipment and more importantly for lying about what had happened.

Durling said his wife was present for the latter conversation but she was not present to give evidence at the hearing.

Sessford's recollection of the November 12th discussion is that he did indicate that he had touched the filtration system and denied telling Durling that he had lied earlier on this issue.

**ISSUE TO BE DECIDED**

Did 482212 have just cause to dismiss Sessford?

**ANALYSIS**

There is an onus on the appellant in these appeals to show that it is more likely than not that the Determination is in error.

In this appeal since there was only evidence from Durling and Sessford on all substantive issues I must weigh their evidence to determine whether 482212 has satisfied the onus referred to.

I must dismiss the appeal because Sessford's versions of the events is just as likely as Durling's - in other words, I cannot accept Durling's evidence over that of Sessford.

I have difficulty with Durling's assertion that Sessford initially lied about whether he had touched

the tanks. Clearly Sessford knew that the store manager and at least one other employee saw or knew that Sessford was working on the tanks - one would not think that he would expect to get away with a blatant lie about his involvement.

I also have some difficulty with the serious criticism that was leveled at Sessford during the course of the hearing by Durling. In effect, Durling said that he many other complaints about Sessford and at points in his testimony he implied that Sessford was a marginal employee. He said in a written submission to the Director that Sessford:

*was found to frequently disregard company rules and instructions and was repeatedly warned by me . He would be lazy and not carry out his cleaning jobs as instructed. He would not look after customers. He would repeatedly get animals out to show his friends and ignore customers.*

Despite this Durling testified that he had no hesitation in entrusting the store to Sessford to run on his own and that he regarded him as one of his best employees. I found Durling's evidence on this point to be most inconsistent.

## **ORDER**

In summary, I order under Section 115 of the *Act*, that the Determination No. CDET 003539 be confirmed.

---

**Alfred C. Kempf**  
**Adjudicator**  
**Employment Standards Tribunal**

:cef