

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act

- by -

Robert James Peters
("Peters")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

Adjudicator: Hans Suhr

File No.: 96/575

Date of Decision: November 26, 1996

DECISION

OVERVIEW

This is an appeal by Robert James Peters (“Peters”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against Determination No. CDET 003935 issued by a delegate of the Director on September 11, 1996. In this appeal Peters claims that the Director’s delegate incorrectly determined that he was not entitled to compensation for length of service pursuant to Section 63 of the *Act*.

I have completed my review of the submissions received from Peters, Murphy Aircraft Mfg. Ltd. (“Murphy Aircraft”) and information was provided by the Director.

ISSUE TO BE DECIDED

1. Is Murphy Aircraft required to pay compensation for length of service to Peters pursuant to Section 63 of the *Act* ?

FACTS

The submissions by Peters and Murphy Aircraft agree on a number of points which are as follows:

- a) On Peters’ last day of employment, he was requested by Darryl Murphy (“Murphy”), the President of Murphy Aircraft, to increase the rate of production on a particular machine;
- b) Peters, after expressing his concerns with respect to the safety of the request and the possible consequences, did increase the rate of production as directed;
- c) The increase in the rate of production resulted in the breaking of a “cutter” as Peters had predicted;
- d) Peters became upset and after some discussion between Peters and Murphy, the content of which is in dispute, Peters left the premises.

SUBMISSIONS BY THE PARTIES

In his submission accompanying the appeal, Peters states that he told Murphy that “ I was taking the rest of the day off as I was not in fit condition to continue safely until I regained my composure”. Peters goes on to state that “When Darryl (Murphy) told me not to come back.....” he, Peters, became upset and went into “emotional shock” and was “developing

a violent tension headache and shaking so had no choice but to remove myself from the scene immediately.”

Peters further states on page 5 of his submission that “ my full intent was to bring home the fact that I was not the bottleneck in the system (read scapegoat) that Darryl obviously perceived me to be and to give him a bit of a reality check as so often he gets totally out of touch with reality.” Peters goes on to state “THAT WAS WHY I CALLED DARRYL’S BLUFF!”

Murphy Aircraft submits that Peters was told that if he went home, not to come back.

ANALYSIS

The *Act* in Section 63 (1) (2) sets forth an employers’ liability for compensation for length of service. The *Act* does however, in Section 63 (3), provide for this liability to be deemed to have been discharged under certain circumstances as set forth. Section 63 states:

Liability resulting from length of service

- 63.**
- (1) After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week’s wages compensation for length of service.
 - (2) The employer’s liability for compensation for length of service increases as follows:
 - (a) after 12 consecutive months of employment, to an amount equal to 2 week’s wages;
 - (b) after 3 consecutive years of employment, to an amount equal to 3 week’s wages plus one additional week’s wages for each additional year of employment, to a maximum of 8 week’s wages.
 - (3) The liability is deemed to be discharged if the employee
 - (a) is given written notice of termination as follows:
 - (i) one week’s notice after 3 consecutive months of employment;
 - (ii) 2 week’s notice after 12 consecutive months of employment;
 - (iii) 3 week’s notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 week’s notice;
 - (b) is given a combination of notice and money equivalent to the amount the employer is liable to pay, or
 - (c) terminates the employment, retires from employment, or is dismissed for just cause.

- (4) The amount the employer is liable to pay becomes payable on termination of the employment and is calculated by
 - (a) totaling all the employee's weekly wages, at the regular wage, during the last 8 weeks in which the employee worked normal or average hours of work,
 - (b) dividing the total by 8, and
 - (c) multiplying the result by the number of weeks' wages the employer is liable to pay.
- (5) For the purpose of determining the termination date, the employment of an employee who is laid off for more than a temporary layoff is deemed to have been terminated at the beginning of the layoff.

The critical determination in this matter is whether Peters terminated his own employment or was terminated by Murphy Aircraft. In arriving at that determination, I must consider, based on the submissions of the parties, what is most likely to have happened with respect to the issue of "quit" or "fired"

Peters states in his submission that he wanted to bring home the fact that he was not the bottleneck and further states that he "called Darryl's bluff", and that acknowledgment in my view, in the context of those circumstances, could only mean that Peters was aware that he had been told if he went home, not to come back. In the face of this ultimatum by Murphy Aircraft, Peters still chose to go home. By his actions in going home Peters chose to repudiate the employment relationship.

Furthermore, Peters acknowledges that the previous week he had said to Brian Cooper that he, Peters, "was ready to quit if Darryl didn't smarten up and quit abusing me verbally and trying to put me down at every opportunity."

There was no evidence provided that Peters made any attempt, either later that day or the very next day to contact Murphy Aircraft to discuss his status with his employer, in fact, Peters states that when Darryl (Murphy) told him not to come back, Peters considered that he had been fired.

Based on the above and the other information provided for review, I conclude that Peters quit. Pursuant to Section 63 (3) (c) of the Act, Murphy Aircraft's liability for compensation is therefore deemed to have been discharged.

The appeal by Peters is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that Determination No. CDET 003935 be confirmed.

Hans Suhr
Adjudicator
Employment Standards Tribunal

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