

An appeal

- by -

Jerry Juker operating as JJ's Furniture Liquidators
("JJ's")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: David B. Stevenson

FILE No.: 2001/189

DATE OF DECISION: July 5, 2001

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Jerry Juker operating as JJ’s Furniture Liquidators (“JJ’s”) of a Determination that was issued on February 6, 2001 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that JJ’s had contravened Part 8, Section 63 of the *Act* in respect of the employment of Amarjit Dhami (“Dhami”) and ordered the JJ’s to cease contravening and to comply with the *Act* and to pay an amount of \$446.20.

JJ’s says the Determination is wrong because there was just cause to terminate Dhami.

The Tribunal has decided an oral hearing is not necessary in order to address the issues raised in this appeal.

ISSUE

The sole issue in this appeal is whether JJ’s has shown that the Determination is wrong and that there was just cause to terminate Dhami.

FACTS

JJ’s operates a bedroom furniture manufacturing facility. Dhami worked for JJ’s from July 14 1999 to March 29 2000 as a labourer at the rate of \$10.00 an hour.

Dhami alleged that his employment was terminated by his employer without written notice or compensation in lieu of notice as required by Section 63 of the *Act*. JJ’s alleged there was just cause to terminated Dhami’s employment.

The Determination set out the following findings of fact

The employer and the employee recollection of events parallel each other with a few exceptions. The exceptions may be explained by the need for Dhami to speak through Modghill as an interpreter.

Both parties were aware that an alleged injury occurred. Dhami asked Modghill if he would be paid for March 30 and 31 2000. The message to Dhami from the employer was that he would not be paid for the two days. Dhami was told “if you have injured yourself than [sic] apply for Workers Compensation.

Secondly, the disputed evidence.

The employer states that Dhama was terminated for just cause because he wanted to be paid for two days he did not work due to an alleged injury sustained at work allegedly threatening to file a WCB claim if he was not paid. This is a serious accusation and is the sole reason Dhama was terminated.

When I asked Juker for a meeting to further investigate/interview Modghill about the meetings and discussions that Modghill had with Dhama I was told that Modghill was not available. I asked Juker for a statement from Modghill about the discussions he had with Dhama. What I received was a faxed copy of the letter dated June 1 2000 initialed by Garrison and Modghill. (enclosure #2)

The need to hear from Modghill was necessary because only Modghill heard directly what was allegedly said by Dhama in the meeting that occurred on April 3 2000. Dhama and Modghill were speaking Punjabi and Modghill was translating for Juker and Garrison.

The Determination concluded that because of the inability to interview Modghill or obtain an independent, and direct, account from him concerning the alleged threat made by Dhama in the meeting of April 3 2000 and in the face of the version of events provided by Dhama, no conclusion could be made that Dhama had engaged in the conduct alleged. As the employer had failed to show just cause, their liability to pay length of service compensation had not been discharged.

ARGUMENT AND ANALYSIS

In support of the appeal, JJ's has simply resubmitted the letter dated June 1 2000, which was referred to in the findings of fact. That letter states the employer's allegations of fact and its position on the merits of the complaint. In effect, the appeal does no more than ask the Tribunal to accept their allegations of fact, their position on the facts and, based on those facts, conclude there was just cause to terminate Dhama.

The onus is on an employer to establish just cause. If it is not already obvious, the Director did not accept that JJ's had established the facts as alleged in the letter and, as a result, had not established just cause.

It is not the function of the Tribunal in an appeal to simply substitute its opinion for that of the Director without some basis for doing so. The burden is on JJ's to show the Determination is wrong. Where an appellant is challenging a conclusion of fact, the appellant must show that the conclusion of fact was simply based on wrong information, that it was manifestly unfair or that there was no rational basis upon which the findings of fact could be made (see *Re Mykonos Taverna, operating as the Achillion Restaurant*, BC EST #D576/98).

JJ's has failed to satisfy the burden on them in this appeal and it is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated February 6, 2001 be confirmed in the amount of \$466.20, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal