

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 -

Marijana Burhoe

- of a Determination issued by -

The Director Of Employment Standards
(The "Director")

ADJUDICATOR: Richard S. Longpre

FILE NO.: 97/450

DATE OF HEARING: August 11, 1997

DATE OF DECISION: August 21, 1997

DECISION

APPEARANCES

Mr. Allan Caplan for Caplan & Company

OVERVIEW

Ms. Marijana Burhoe filed an appeal pursuant to Section 112 of the *Employment Standards Act*, (the “*Act*”) seeking review of Determination No. CDET 006250. Burhoe asserted a breach of Section 54(2) of the *Act*. She complained that Mr. Allan Caplan terminated her employment from his law office because she was pregnant. The Delegate of the Director denied her complaint. Ms. Burhoe did not attend the hearing.

ISSUE TO BE DECIDED

Did the Delegate err in failing to decide that Burhoe’s termination was based on the fact she was pregnant?

FACTS

The Determination sets out the facts of the case. Burhoe commenced employment with Caplan’s firm on November 7, 1994 as a “Receptionist/Person Friday”. She learned that she was pregnant on or about December 16, 1994. On April 28, 1995 Burhoe was terminated. Her Record of Employment stated a shortage of work as the reason for her termination.

Burhoe’s complaint asserted that her pregnancy was the only plausible explanation for her termination. The Delegate reviewed that allegation with Burhoe, Caplan and employees of the firm who worked with Burhoe. The Delegate examined Caplan’s reasons for Burhoe’s termination against that evidence. The Delegate found that there was no direct evidence to support Burhoe’s complaint. The Determination reads:

I find that the evidence falls short of substantiating that Caplan knew of Burhoe’s pregnancy or that Caplan had a bias against pregnant employees.

The Delegate found that the probable reason for termination was Caplan’s perception that Burhoe was not “sufficiently suitable employee to warrant being retained after the probation period in view of the firm’s shortage of work”.

The appeal hearing into this matter was scheduled for August 11, 1997. Burhoe notified the Tribunal that morning that she would not be attending the hearing.

ANALYSIS

Burhoe's appeal of the Determination is based on a disagreement with evidentiary conclusions reached by the Delegate. Burhoe asserted that certain comments were made by Caplan at the time of her hire. These comments allegedly reflected Caplan's bias against pregnant women. In his reply submission to the appeal, Caplan disputed Burhoe's allegations. At the hearing Caplan brought witnesses to dispute Burhoe's allegations and to support his position.

Burhoe's failure to attend the hearing and to establish her case defeats her appeal. She did not prove her allegations. She did not rebut the evidence Caplan would have called. The Determination's evidentiary findings remain unchallenged. Burhoe's appeal is denied.

ORDER

Pursuant to Section 115 of the *Employment Standards Act*, Determination CDET 006250 is confirmed

Richard S. Longpre
Adjudicator
Employment Standards Tribunal