

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 -

Arthur Kamsteeg
("Kamsteeg")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Michelle Alman

FILE No.: 2000/506

DATE OF DECISION: September 8, 2000

DECISION

OVERVIEW

This decision addresses an appeal filed pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Arthur Kamsteeg (“Kamsteeg”) from a Determination issued June 27, 2000 by a delegate of the Director of Employment Standards (“the Director”). The Determination concluded that Kamsteeg had been dismissed for just cause from his employment with Advance Collision Auto Centre Ltd. (“Advance”) and, therefore, was not owed notice or compensation in lieu of notice pursuant to section 63 of the *Act*.

Kamsteeg and the Director made written submissions in this appeal. Kamsteeg offered no submissions in reply to the Director’s very brief submissions.

ISSUES

The issue to be decided is whether Kamsteeg is owed compensation for length of service.

THE FACTS AND ANALYSIS

Kamsteeg worked as an automobile mechanic for Advance for 13 years prior to December 30, 1999. On December 21, 1999 Kamsteeg had told Ken King (“King”), the Mechanical Shop Foreman for Advance, that he had been charged with impaired driving, and as a result, would be without a driver’s license for three months commencing January 4, 2000. King gave Kamsteeg written notice of termination of his employment on December 30, 1999 because Kamsteeg’s job required him to have a valid driver’s license to test-drive customer’s vehicles. Kamsteeg filed his complaint for compensation for length of service on May 17, 2000.

On June 27, 2000 Advance sent the Director’s delegate a page of a version of Advance’s Personnel Policy Manual (“the Manual”) dealing with Advance’s policies regarding Motor Vehicle Records. The section discussed the relationship between eligibility for employment or continuing employment with Advance and having or maintaining an acceptable Motor Vehicle Record. The Motor Vehicle Records section also specifically addressed conviction of impaired driving charge as potentially resulting in dismissal from employment with Advance.

Advance also enclosed to the Director’s delegate an “Employee Agreement” page from the Manual signed by Kamsteeg on September 1, 1998 acknowledging his receipt, review and acceptance of the Manual as part of his conditions of employment. The “Employee Agreement” indicates that the Manual’s provisions are not an employment contract, and that the employee job descriptions “run in conjunction” with the Manual. The Director’s delegate appended the two pages from the Manual and a letter dated June 27, 2000 from Advance’s Secretary as an exhibit to the Determination issued June 27, 2000 denying Kamsteeg’s complaint for compensation for length of service.

Kamsteeg’s appeal submissions challenged the validity of the Motor Vehicle Records page of the Manual sent by Advance on June 27, 2000 to the Director’s delegate. Kamsteeg provided with

his appeal a complete copy (less his “Employee Agreement” signature page) of the only version of the Manual that he received in 1998. Kamsteeg argued that he had no prior knowledge of any different version of the Manual before the Determination issued, and that the Director’s delegate had not allowed him to respond to Advance’s version of the Manual before the Determination issued. The version of the Manual provided by Kamsteeg was dated August 6, 1998 and indicated that it superseded no other version. It also provided in the Introduction, at p. 3, that Advance reserved

the right to alter, change, add to, or delete any of these policies at any time with proper notice. This notice will be given by means of payroll memo for the next payday.

Kamsteeg also argued in his appeal that he had been acquitted on June 29, 2000 of all of the charges that resulted in his loss of his driver’s license. He stated this was “relevant to ... [his] good character” and countered the Determination’s statement that he had lost his license as “a result of his own actions.” Kamsteeg appended to his appeal submissions a copy of the Record of Proceedings from his trial. The Record indicates that on June 29, 2000 a stay of proceedings was entered on two counts against Kamsteeg, while he was acquitted on one count. Kamsteeg does not specify in his appeal the nature of any of the counts against him, but he does not deny the accuracy of Advance’s termination letter statement that he told King on December 21, 1999 that he had a “pending impaired charge.”

Section 63 of the *Act* provides in relevant part:

- 63** (1) *After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week’s wages as 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 weeks’ wages;*
- (b) *after 3 consecutive years of employment, to an amount equal to 3 weeks’ wages plus one additional week’s wages for each additional year of employment, to a maximum of 8 weeks’ wages.*
- (3) *The liability is deemed to be discharged if the employee*
- ...
- (c) *terminates the employment, retires from employment, or is dismissed for just cause.*

Neither Kamsteeg nor Advance provided a copy of Kamsteeg’s job description. The need for Kamsteeg to hold a valid driver’s license so as to be able to drive customers’ vehicles was mentioned, however, in Kamsteeg’s December 30, 1999 termination letter and in Advance’s June 27, 2000 letter to the Director’s delegate. Though the June 27, 2000 letter cited only the need for Kamsteeg to test drive vehicles for wheel alignments, Kamsteeg in his submissions did

not deny that test-driving was a general job requirement for mechanics at Advance. Instead, Kamsteeg argued that because wheel alignments were only one among numerous other duties he was required to do, he could have kept his employment if Advance had rearranged his and the other mechanics' duties so that he did not have to drive.

The Director's delegate found, on a balance of probabilities, that it was reasonable to conclude it necessary that a mechanic hold a valid driver's license. She relied on both Advance's provided written policy concerning Motor Vehicle Records, and on the daily routine of a mechanic "where vehicles are test driven both before and after a repair is done on a vehicle." Though there is some question as to whether Advance's Motor Vehicle Record policy was ever brought to Kamsteeg's attention, that point is actually irrelevant to the issue before the Tribunal. The issue is whether the Director's delegate was correct in concluding that Kamsteeg had given Advance cause to terminate his employment.

Regardless of Kamsteeg's knowledge, or lack of knowledge, of Advance's Motor Vehicle Records policy, Kamsteeg did not deny that he was aware that he was required to be able to drive as part of his employment duties at Advance. All drivers must have a valid driver's license to drive, hence the loss of Kamsteeg's driver's license meant he was no longer able to fulfill one of his employment duties. An employee's inability to perform a necessary duty of his or her employment can be fatal to the employment relationship—see *Kenneth Kruger*, BC EST #D003/97. In the circumstances here, I find that on loss of his driver's license, Kamsteeg gave Advance cause to terminate his employment, as he was no longer able to perform a necessary duty of his employment as a mechanic. Nothing in Kamsteeg's contractual employment relationship with Advance obliged Advance to rearrange his and its other mechanics' duties so that Kamsteeg might maintain his employment. There was no common law principle or collective agreement provision requiring Advance to do anything to allow an employee in Kamsteeg's circumstances to continue his employment with modified duties. Instead, Advance exercised its right to terminate Kamsteeg's employment for cause, which left Advance without obligation to pay Kamsteeg compensation for length of service under section 63 of the *Act*.

ORDER

Pursuant to section 115 of the *Act*, I hereby confirm the Determination issued June 27, 2000.

Michelle Alman
Adjudicator
Employment Standards Tribunal