

**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 -

Strait Express Ltd. and Steve Dhaliwal operating as  
S.D. Dispatch & Trucking Services  
("Strait")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 97/460

**DATE OF HEARING:** August 25, 1997

**DATE OF DECISION:** August 26, 1997

**DECISION**

**APPEARANCES**

Steve Dhaliwal           for Strait Express Ltd. & S.D. Dispatch & Trucking Services

Keith Barrett           on his own behalf

**OVERVIEW**

This is an appeal by Strait Express Ltd. and Steve Dhaliwal operating as S.D. Dispatch & Trucking Services (“Strait”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) from a Determination dated May 30, 1997 issued by a delegate of the Director of Employment Standards (the “Director”). The Director determined that Strait was required to pay compensation for length of service to Keith Barrett (“Barrett”) pursuant to the provisions of Section 63 of the *Act*.

Strait alleges that the Director erred in the Determination as Barrett quit his employment and therefore no compensation for length of service is owed.

**ISSUE TO BE DECIDED**

The issue to be decided in this appeal is whether Strait owes compensation for length of service to Barrett ?

**FACTS**

The following facts are not in dispute:

- Barrett was employed by Strait as a truck driver for approximately 4 months;
- Barrett had had a number of minor accidents with his assigned truck during his period of employment;
- Barrett was assigned on February 11, 1997 to ‘pick up’ a load at a McMillan Bloedel operation in Vancouver;
- Barrett telephoned Strait to advise that he was going to ‘park’ the truck;
- Barrett parked the truck and turned the keys over to a co-worker who also happened to be at the McMillan Bloedel location with another truck;
- Barrett’s employment with Strait ceased on February 11, 1997.

Strait states that:

- Barrett caused a lot of damage to company vehicles and other structures during his 4 months of employment and despite repeated promises to repair the damage or pay for the repairs, Barrett did not;
- Barrett was advised on the morning of February 11, 1997 that the amount of \$185.00 would be deducted from his pay for damage to an outbuilding at a customer's premises (Ecco);
- Barrett contacted Strait by telephone from the McMillan Bloedel yard to advise that if the \$185.00 were to be deducted, he would be parking the truck;
- Barrett was advised during this telephone conversation that the \$185.00 would certainly be deducted whereupon he advised Strait that the truck was going to be parked.

Barrett states that:

- upon arriving at the McMillan Bloedel yard he realized that he was becoming very anxious and disoriented, he felt like he was 'losing it';
- he contacted his Doctor by telephone from the yard shipping office and his Doctor advised him to try to complete the day's work and to come in to the office first thing on February 12;
- after the telephone call to his Doctor, he telephoned Strait and spoke to Steve Dhaliwal ("Dhaliwal") to advise him that he would require time off the next morning to attend at his Doctor's office;
- during this conversation Dhaliwal 'lost it' and became 'unglued' and told Barrett he was fired;
- he attempted to explain his situation to Dhaliwal but Dhaliwal was not prepared to listen to anything;
- he again telephoned his Doctor to advise that he had been fired and was now very distraught and unable to continue to work;
- his Doctor spoke to him at length and helped to calm him down which enabled him to at least function in some manner whereupon he called his cousin to come and pick him up to take him home;
- while cleaning his personal belongings out of the truck, he noticed a co-worker arrive at the McMillan Bloedel yard and turned the truck keys over to the co-worker telling him that Dhaliwal had just fired him (Barrett);

**ANALYSIS**

I must now decide, on the balance of probabilities, whether Barrett quit his employment or was terminated by Strait. In cases such as this present appeal where there is conflicting evidence with respect to issues critical to the matter at hand and, where both parties were equally straightforward in presenting their evidence, it is often necessary to seek corroborating evidence from other sources. The letter from Barrett's Doctor dated July 4, 1997 is such corroborating evidence. This letter to the Tribunal indicates that on February 11, 1997, Barrett telephoned his Doctor on 2 occasions, the first to advise that he was experiencing considerable anxiety and even panic. The Doctor then advised Barrett to inform his employer that an appointment was scheduled for first thing the next morning and that time off work would be required to attend. The Doctor states that the second telephone call from an even more upset and anxious Barrett was to advise that after informing his employer about the appointment the following morning, Barrett had been fired from his job.

I conclude that on the balance of probabilities, Strait terminated Barrett's employment and Barrett therefore is entitled to compensation for length of service in the amount as calculated by the delegate of the Director and set forth in the Determination.

For all of the above reasons, the appeal by Strait is dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated May 30, 1997 be confirmed in all respects.

**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**