

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 -

520058 BC Ltd. operating as Earn Your Wings Travel
("Wings")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 97/462

DATE OF HEARING: August 26, 1997

DATE OF DECISION: September 2, 1997

DECISION

OVERVIEW

Earn Your Wings Travel (“Wings”) filed an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) seeking a review of a Determination dated June 4, 1997. Wings alleges that the delegate of the Director of Employment Standards (the “Director”) erred in determining that Hilary Percy (“Percy”) was entitled to compensation for length of service. Neither Wings nor Percy attended the hearing.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether the delegate of the Director erred in determining that Percy was entitled to compensation for length of service ?

FACTS

Percy was employed by Wings as a Distributor of Services from September 1996 until April 7, 1997 on which date Percy provided Wings with 1 weeks notice of resignation. At that time Percy was advised by Nathan Kalenuik (“Kalenuik”), the manager of Wings that a staff meeting to be held that morning was to discuss the options of all employees taking a 20% wage cut to maintain full employment or having to lay 1 employee off work in order to reduce overhead costs. Percy did not attend the staff meeting. Kalenuik states that neither the 20% reduction in wages nor the layoff of an employee was then necessary in light of Percy’s actions.

Percy’s complaint alleges that she asked Kalenuik if she was being laid off and he replied “Yes”. Percy then gathered her belongings and left the office. The delegate of the Director reviewed the allegations with a co-worker and Kalenuik.. The Determination states:

It was determined after hearing the complainant’s and Mr. Kalenuik’s version of the conversation (sic) which took place April 7, 1997 that irregardless of whether Mr. Kalenuik actually dismissed or laid off the complainant, it was made clear to the complainant that she would face an immediate 20% pay cut. This significantly altered the complainants condition of employment resulting in constructive dismissal of the complainant.

The delegate of the Director found that Percy was entitled to compensation for length of service

The appeal hearing into this matter was scheduled for August 26, 1997. Neither Wings not Percy attended.

ANALYSIS

Wings' appeal of the Determination is based on a disagreement with evidentiary conclusions reached by the delegate of the Director. Wings alleges that an incomplete investigation into the circumstances was conducted by the delegate of the Director.

The burden of proof in establishing that the Determination was in error rests with Wings. Wings failure to attend the hearing and establish their case defeats their appeal. Wings did not prove their allegations. The Determinations evidentiary findings remain unchallenged.

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

ORDER

Pursuant to Section 115 of the *Employment Standards Act*, I order that the Determination dated June 4, 1997 be confirmed in all respects.

Hans Suhr
Adjudicator
Employment Standards Tribunal