

An appeal

- by -

Lorenzo Sforza
("Sforza" or "employee")

- 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: Paul E. Love

FILE No.: 2001/400

DATE OF DECISION: July 19, 2001

DECISION

OVERVIEW

Lorenzo Sforza, a former employee (“employee”) of Premier Saloons International filed an appeal from a Determination dated April 30, 2001, issued by a Delegate of the Director of Employment Standards (“Delegate”), pursuant to the *Employment Standards Act, R.S.B.C. 1996, c. 113*. (“Act”). The employee claimed damages for wrongful dismissal and insult, damages for misrepresentation of the scope of management duties, a claim for reimbursement for items purchased by the employer, reimbursement for cell phone charges. I determined that the only evidence before me was that the employer had not paid the cell phone charges, and directed payment by the employer. The claim for wrongful dismissal and insult was not within the jurisdiction of the Tribunal, and the employee was not entitled to compensation for length of service. The employee was terminated within the first 90 days of employment.

ISSUE

Did the Delegate err in finding that the employer did not misrepresent the terms and conditions of employment.?

Did the Delegate err in failing to assess damages for wrongful dismissal and personal insult?

ARGUMENT

Mr. Sforza claims that the Director “too easily” dismissed his claim for misrepresentation, and erred with regard to dismissing his claims for items purchased, cell phone charges, and claims for wrongful dismissal and insult.

THE FACTS

This is an appeal based on written submissions received from the employee and Delegate, from a Determination dated April 30, 2001 issued by a Delegate of the Director of Employment Standards (“Delegate”), pursuant to the *Employment Standards Act, R.S.B.C. 1996, c. 113*. (“Act”). The employer did not supply a written submission.

Mr. Sforza (the “employee”) responded to an advertisement placed by Premier Salons International operating as Magic Cuts, (“Magic Cuts” or “employer”) for a stylist/manager position for a new salon about to open in the Eatons Centre in Victoria. He was the successful applicant. He commenced employment on November 16, 2000, and was terminated by the employer on January 12, 2001. The employee alleged that he was wrongfully dismissed, and the employer alleged that it terminated Mr. Sforza for cause. Mr. Sforza was hired on a three month probationary term and was dismissed within the three month time period. The Delegate did not

resolve the issue of whether Mr. Sforza was terminated for cause, and it is unnecessary for me to do so, as the employee is ineligible for compensation for length of services, pursuant to s. 63 (3) of the *Act*, as the employee has not worked for three months.

Mr. Sforza also complained that the employer had not paid for supplies which he purchased on behalf of the employer in the amount of \$116.00 and for cell phone charges in the amount of \$59.76. Mr. Sforza also claimed damages in the amount of \$1,120.00 for wrongful dismissal and insults. The Delegate was unable to determine the claim for reimbursement for purchases, as the employee provided no receipts. The Delegate determined that Mr. Sforza had not worked for a period of 90 days, and therefore was ineligible for compensation for length of service pursuant to s. 63 of the *Act*.

While not noted in the written complaint of the employee, the Delegate also investigated whether the employer had misrepresented the nature of the position to Mr. Sforza. Mr. Sforza claimed to the Delegate, during the investigation, that he was not allowed to manage in a manner that he felt was appropriate to the position.

ANALYSIS

In an appeal under the *Act*, the burden rests with an appellant, in this case the employee, to show an error in the Determination such that I should vary or cancel the Determination. The lack of a submission by the employer, does not mean that the Adjudicator will be persuaded by arguments presented by the appellant. The appellant has to prove an error.

Cell Phone Charges:

The Delegate states that the employer accepted responsibility for cell phone charges, and indicated that it had provided the money to Mr. Sforza. The Delegate alleges that Mr. Sforza did not maintain his denial of receipt of monies, after receiving a letter from the Delegate setting out the position of the employer that the monies had been paid. Mr. Sforza denied receiving the money, in his submissions to the Tribunal. I have no submission from the employer. I therefore find as a fact that Mr. Sforza has not received the sum of \$59.76, as his evidence is uncontradicted.

Reimbursement for Supplies and other Business Expenses:

The Delegate dismissed this claim on the basis that there was inadequate proof provided by the employee. If the employee had proved this to the Delegate, the Delegate no doubt would have determined that the amount was payable by the employer. While the employee claimed that all the receipts were provided to the employer, there was no proof provided to the Delegate. The Delegate correctly placed the burden of proof on the employee to show that the employee had incurred expenses. The employee has not demonstrated any error by the Delegate in the assessment of this claim, and therefore I dismiss this claim.

Misrepresentation:

The Delegate did investigate the oral complaint of the employee concerning misrepresentation. The Delegate determined that there was no misrepresentation because there was nothing in the advertisement for the position, or the pre-hiring interview, which amounted to a representation by the employer concerning the scope of management activities. There is no evidence that the terms and conditions of Mr. Sforza's employment were reduced to writing. There is no evidence that Mr. Sforza ever objected to the scope of his duties after taking up employment. The employee has filed no material which contradicts, or shows any error, in the findings made by the Delegate. The Delegate interviewed Mr. Sforza for about one and a half hours. During the course of the interview, the employee alleged that he was given power to manage, hire and fire employees as he saw fit. The Delegate also interviewed a representative of the employer. The employer disputes that Mr. Sforza was ever given the power to manage, hire or fire as he was disputed by the employer, who placed the employee on a probationary term. There is no evidence before me from which I can conclude that the Delegate erred in the assessment of "misrepresentation".

Section 8 of the *Act* reads as follows:

An employer must not induce, influence or persuade a person to become an employee, or to work or to be available for work, by misrepresenting any of the following:

- (a) the availability of a position;*
- (b) the type of work;*
- (c) the wages;*
- (d) the conditions of employment.*

In my view, the Delegate correctly placed the burden of showing a misrepresentation on the employee. There is simply no proof of any representation or misrepresentation made by the employer, and therefore the employee's claim on this point is dismissed.

Wrongful Dismissal and Insult Damages

The employee claimed "compensation for wrongful dismissal and personal insult. The Tribunal, as a creature of statute, has the jurisdiction to hear and decide appeals and reconsiderations of claims made under the *Act*. Claims for compensation for wrongful dismissal and personal insult are not within the jurisdiction of the Delegate to investigate, or the Tribunal to review. The employee's claim on this point is dismissed.

ORDER

Pursuant to s. 115 of the Act, I confirm the Determination dated April 30, 2001, with the exception that Premier Salons International operating as Magic Cuts shall pay to the Director the sum of \$59.76, together with interest in accordance with s. 88 of the *Act*, for transmission to Lorenzo Sforza.

Paul E. Love
Adjudicator
Employment Standards Tribunal