

An appeal

- by -

Jacobsen Pontiac Buick (1993) Ltd.
("Jacobsen")

- 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: Cindy J. Lombard

FILE No.: 2001/341

DATE OF HEARING: July 16, 2001

DATE OF DECISION: July 25, 2001

DECISION

APPEARANCES:

Jim Turner on behalf of the Appellant/Employer, Jacobsen Pontiac Buick (1993) Ltd.

Marion Gibson, Respondent/Employee, on her own behalf.

Larry Bellman, Delegate of the Director of Employment Standards.

OVERVIEW

This is an appeal by Jacobsen Pontiac Buick (1993) Ltd. (“Jacobsen”) pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) of a Determination issued by the Director of Employment Standards (the “Director”) on April 26, 2001.

The Determination found that the former employee of Jacobsen, Marion Gibson, had been terminated by a substantial alteration of her employment condition pursuant to Section 66 of the *Act* and was due compensation for length of service and interest in the total amount of \$5,482.56 (the “Determination”).

ISSUE TO BE DECIDED

Whether the Delegate of the Director was correct in his determination that the employment of Gibson had been terminated by Jacobsen on the basis of his finding that Gibson’s condition of employment had been substantially altered by Jacobsen.

The onus is on the Appellant, Jacobsen, to show on a balance of probabilities that the Determination was wrong.

FACTS AND ANALYSIS

Gibson was employed by Jacobsen from November, 1988, until May 1, 2000. Her position at the time she left that employment was service consultant earning a bi-weekly wage of \$1,289.38.

On April 6, 2000, Gibson went on a medical leave. Her family physician, Dr. M. P. Bobyne in his report dated April 14, 2000, notes symptoms of depression and stress and anxiety which he attributes to Gibson’s complaint of her work environment. Gibson had two prior leaves of absence in the twelve years she was employed, namely in 1991 and 1998 when she was going through a divorce and then dealing with a death in her family.

According to Gibson, she felt that she was treated unfairly by the employer just prior to her dismissal and submitted letters from former employees who were employed at the relevant time (Jennifer Simmons and Cameron Snorm) to support her concerns.

On April 28, 2000, (a Saturday), Turner asked Gibson to come into Jacobsen to meet with him. Turner says the purpose of the meeting was to discuss options to get Gibson back to work at some less stressful position. Turner offered Gibson a position as a cashier, not only a different job but with one giving her less hours (three days per week as opposed to five) and which required working on Saturday when her position as service consultant was Monday to Friday as well as a lesser hourly wage (\$9.50 per hour as opposed to the \$15.36 per hour she had been receiving). Turner says that this was just one option and that he told Gibson that if she was concerned about the wages, he would talk to the owners. Turner asked Gibson to think about the offer over the weekend.

Gibson says and I find her evidence credible that when she asked Turner whether she would get her old job back, he replied, "You won't." On Monday, May 1, 2000, Gibson therefore stated her intention to terminate her employment and Turner had her sign a memorandum of resignation on that date.

Section 66 of the *Act* states:

"If a condition of employment is substantially altered, the Director may determine that the employment of an employee has been terminated."

In all circumstances it is clear on the evidence that the condition of Gibson's employment had been substantially altered by Jacobsen including:

- a) job duties
- b) wages
- c) hours
- d) weekend work required

For the foregoing reasons, the Appellant Jacobsen has not discharged its onus on showing that the Determination was wrong and the Appeal is therefore dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter dated April 26, 2001, be confirmed plus whatever further interest which has accrued pursuant to Section 88 of the *Act* since its issue.

Cindy J. Lombard
Adjudicator
Employment Standards Tribunal