

**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 -

Jeremy Bramwell  
(“ Bramwell”)

- of a Determination issued by -

The Director of Employment Standards  
(the “Director”)

**ADJUDICATOR:** Michelle Alman

**FILE No.:** 2000/455

**DATE OF HEARING:** September 25, 2000

**DATE OF DECISION:** September 29, 2000



appraisals of CRA's than those of RIBC-qualified appraisers, making CRA-designated appraisers desirable employees.

On or about July 14, 1999 Westech's principal, John Doherty ("Doherty") interviewed Bramwell for employment with Westech as an appraiser. Bramwell was desirable to Westech as an employee with imminent approval as a CRA because Westech's CRA-qualified employee was departing. Bramwell and Doherty agreed in their testimony that Bramwell began work on July 19, 1999. Bramwell received confirmation of his CRA designation shortly after he interviewed with Westech. In July, 1999 Bramwell had been articling for three years to obtain his CRA designation. He testified that he found the job opportunity at Westech through the Provincial chapter of the AIC, which told him that there was a rush need for a CRA at a firm whose CRA was departing. Bramwell asserted in his evidence that he was misled by Doherty into believing that he was being offered permanent employment because only vacation coverage was actually sought.

Bramwell gave evidence to the effect that it is well known in the industry that July and August, along with December, are the slowest business months of the year for residential property appraisers. He also gave evidence on cross-examination that the residential property appraisal business was "dying" and had declined by 50 - 70 percent since early 1998. He testified that for these reasons, among others, he negotiated with Doherty for a contract of employment to ensure himself an adequate minimum monthly salary. Bramwell contends that the agreement as to his compensation, recorded in a letter to him from Doherty dated July 30, 1999, amounts to a contract for a minimum 60-day term of employment. The text of the letter reads:

Reference is made to our recent interview with you and to our discussions regarding salary and/or commissions pertaining to appraisal assignments completed by you for our firm.

As indicated, we are prepared to compensate you for each file you complete at the level of 50% of the fee earned on each file. Should the occasion arise that you are asked to co-sign a report, in the role of supervisor, we will pay to you 10% of the fee earned for the report. Also as indicated to you, and allowing for the slowness of the season, we are prepared to commit to a minimum remuneration of \$2500 per calendar month should the number of files completed, and thus the fees earned by you, be less than this amount.

Jeremy, as discussed, we would like to review this arrangement sometime over the next 60-90 days to ensure that this remuneration is fair and that things are working out for both you and our firm.

The letter was signed only by Doherty on behalf of Westech, despite Bramwell's representations in his appeal submissions that he also had signed the letter. On cross-examination, Bramwell agreed that the letter contained no requirement that he sign to indicate his agreement to the letter's terms. Bramwell also admitted on cross-examination that the letter's comment on "the slowness of the season" likely meant there was not a lot of residential appraisal business at the time.

Following Bramwell's first week, which was spent training in the firm's practices with one of the other appraisers, each of the three other Westech appraisers took vacations of about a month's duration on a rotating basis. This meant that during the remaining days of July, 1999 and all of August, 1999, only Bramwell and two other appraisers were at work at Westech at the same time. Doherty is not an appraiser himself.

Bramwell testified that he regularly received only two daily assignments while the other appraisers received three or four. He said that three or four jobs were a day's work. Consequently, Bramwell said he was done with his work early in the afternoons, and since he disliked being idle while others were working, he usually went home at around 2:30 or 3:00 p.m. He further testified that although sometimes all available assignments were not finished in a day, he was not given the additional work. Bramwell did not say that he ever asked to be given those additional assignments. For the late July, 1999 to late August, 1999 period, the former CRA employed by Westech continued to sign reports for Westech on a contractual employment basis, even though he was an employee of another appraisal firm. Bramwell testified that he did ask for that work.

Bramwell gave evidence that he was paid \$1,250 every two weeks because he was never given the workload to allow him more earning than that in commissions. He also felt he was not being given work in "premium" travel areas such as Whistler, but instead was assigned less desirable work in locations such as Chilliwack.

Bramwell stated that on or about August 20, 1999 he was called in to speak with Doherty. Bramwell said that Doherty gave him and the other Westech employees their end of August paycheques that day because Doherty would be away on vacation after August 20, 1999 until about September 8, 1999. Doherty alone could then sign payroll cheques. Bramwell testified that Doherty also told him to go home, that he would be called for work if he was required, and that they would talk on Doherty's return from vacation. Bramwell denied he was told by Doherty on August 20, 1999 that his employment was terminated.

On September 7 or 8, 1999 (both dates being cited by Bramwell in his testimony), Bramwell said he went in to speak with Doherty about work and about a particular type of report which Bramwell objected to completing. Bramwell stated that his objections were based on what he believed to be legitimate ethical concerns; Doherty, in his testimony, denied those concerns were legitimate. Bramwell gave evidence that during his September 7 or 8 discussion with Doherty, Doherty became heated, and ended by telling Bramwell to go home because there was no work. Bramwell said also that Doherty told him that if Bramwell was unwilling to complete the particular forms, he was of limited value to Westech. Bramwell testified that after that conversation he felt concerned about his job and made inquiries for other positions. He testified in his direct evidence that he obtained a job offer which was later rescinded; on cross-examination, he admitted that what he had obtained was a job possibility, but that he had believed it was a firm job offer.

On September 15, 1999 Bramwell testified he again went to see Doherty, as he had not been called for work. Bramwell demanded to be paid for the first half of September, and Doherty refused, as Bramwell had done no work. Bramwell said he then decided to make a complaint to the Employment Standards Branch instead of arguing. He packed up his personal effects from the Westech offices, and left. He believed that his employment had not been terminated until September 15, when he voluntarily quit. Bramwell also argued at the hearing that under the terms of the July 30, 1999 letter, he was actually a term employee for a minimum of 60 to 90 days, and therefore entitled to be paid for the entire month of September rather than merely for the first 15 days of September. Bramwell argued further that the Director's delegate failed to ask him for proof that his employment was terminated in September rather than August, 1999, and that had he been asked, he would have offered as evidence his prompt September, 1999 applications for Employment Insurance benefits and emergency BC social assistance benefits. He also would have cited his immediate efforts to return to a self-employment educational program in which he had been enrolled just before commencing work with Westech.

Doherty gave evidence to the effect that the July 30, 1999 letter to Bramwell was not a contract but rather a recitation of the terms of the remuneration discussions he had engaged in with Bramwell prior to his employment. Doherty testified that it was “sheer fabrication” that the letter represented a negotiated contract, and stated that he agreed for compassionate reasons to pay Bramwell a set monthly amount rather than only allow him commissions because business was so slow at the time. Doherty’s testimony also was that Bramwell was an unproductive and unsuitable employee whose demeanour was problematic.

Doherty disagreed that the July 30, 1999 letter was a contract for a specified term of employment, and presented a sample contract to counter Bramwell’s contention that the letter had indications of mutual consent. Doherty also denied that the letter was a negotiated contract for a term certain of employment because there was no way he would have bound his company for any length of time to pay someone unknown to the firm a fixed salary in that poor a residential appraisal business climate. He argued, too, that the letter merely stated that the situation would be reviewed at some time “in the next 60-90 days,” not that there was an agreement to employ Bramwell for at least 60 days. Doherty denied that he had ever made promises to Bramwell as to his length or permanency of employment.

Doherty testified, too, that when he spoke with Bramwell on August 20, 1999, he told Bramwell plainly that his employment was terminated and there was no further work for him at Westech’s offices. Doherty said he also told Bramwell he should look for other work, and take it if he found any because his employment was at an end. When Bramwell came in on September 7 or 8, Doherty said the conversation was not the most pleasant, and that Bramwell asked if there were any changes. Doherty testified that he told Bramwell the same things as he had said on August 20, and denied that he had told or suggested to Bramwell on August 20 or on September 7 or 8 to wait at home for any calls for work. Doherty said he’d paid Bramwell for the last two weeks of August but because he was trying to give Bramwell some support during his search for other work.

When Bramwell came in again on September 15, 2000, Doherty stated, he demanded to be paid \$1,250, which Doherty refused to do. Doherty reported that Bramwell threatened to sue him personally in a letter sent shortly after the September 15 meeting. Doherty also stated that from September 1999 until January, 2000, Westech’s business was so slow that it did not hire another appraiser.

There are here two very different versions of the events surrounding both the start of Bramwell’s employment in July, 1999, and its ending, particularly the meeting between Doherty and Bramwell on August 20, 1999. In deciding which versions are to be preferred, I rely not on the demeanour of the interested witnesses giving testimony, but on my assessment of which accounts were most likely to have occurred in all of the circumstances. I must determine which story was most probable in each of the then-existing circumstances, and “its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.”: *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.).

Here, both Bramwell and Doherty testified that the residential appraisal business was in a serious slump in July 1999, and that Westech continued to have its departing CRA co-sign reports even after he’d left Westech. Though Westech needed someone new with a CRA designation, the business was not desperate because they could look to their former employee. Bramwell was an unknown quantity to Westech, and a brand-new CRA. I find that it would not have been probable or reasonable for Westech to commit to long-term employment of Bramwell in all of those circumstances. Accordingly, I prefer Doherty’s statements that he made no promises or representations to Bramwell concerning the length or permanency of his employment with Westech. I further find that while the Westech letter of

July 30, 1999 addresses the salary arrangements for Bramwell employment and indirectly refers to a probationary period, it does not constitute a contract of employment for a term certain, but rather indicates a review period of up to 60 to 90 days for the decision as to whether to continue the relationship.

As to the end of Bramwell's employment, I find that Doherty's version of events again seems more probable and reasonable in all of the then-existing circumstances. The residential appraisal

business was slow. Bramwell was not working full days even when one or another of the Westech appraisers was on vacation, and there were problems with his performance and suitability. In those circumstances, it is not reasonable to believe that the company would have decided to pay someone to stay at home until the owner returned from vacation. Doherty gave his testimony in a straight-forward, reasonable manner. The decision to terminate Bramwell appears to have been handled in that same fashion on August 20, 1999. I find that Bramwell's employment with Westech ended on August 31, 1999, and that all wages and vacation pay owed to him were paid.

**ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination is confirmed and Bramwell's appeal is dismissed.

**Michelle Alman**

**Michelle Alman**

**Adjudicator**

**Employment Standards Tribunal**