

An appeal

- by -

Aquasmart Technologies Inc.
(the "Employer")

- 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: Ib S. Petersen

FILE No.: 2002/337

DATE OF HEARING: October 4, 2002

DATE OF DECISION: October 23, 2002

DECISION

APPEARANCES:

Ms. Emily Testa

on behalf of the Employer

OVERVIEW

This is an appeal by the Employer, pursuant to Section 112 of the *Employment Standards Act* (the “Act”), of a Determination of the Director issued on May 31, 2002. The Determination concluded that Ms. Bonnie Wallis was owed \$747.68 on account of compensation for length of service.

Ms. Wallis worked for the Employer from May 1 to August 21, 2001 as a sales/customer representative at a monthly salary of \$3,000.

FACTS AND ANALYSIS

The Employer appeals the determination. As the Appellant, it has the burden to persuade me that the Determination is wrong. For the reasons set out below, I am persuaded that it has discharged that burden.

The disputes centres around whether or not the Employer had cause for the termination based on what the Employer says was a refusal to perform duties assigned to her on August 20, 2002.

Prior to the hearing, Ms. Wallis advised the Tribunal that she did not intend to participate in the hearing. Ms. Testa attended the hearing and testified under oath on behalf of the Employer.

The evidence before me at the hearing may briefly be summarized as follows:

- Ms. Wallis was employed to perform sales, customer service and office duties. She was hired on a full-time basis to do retail and trade shows.
- In mid-August, Ms. Wallis and other employees attended meetings related to the Employer’s participation in a trade-show at the PNE. The full-time staff, of which Ms. Wallis was one, were advised that the PNE booth would be staffed by part-time employees but that full-time employees should be prepared to attend and relieve as needed.
- The two part-time employees hired to work at the PNE did not “work out.” In the result, Ms. Testa and another full-time employee were left to do the work.
- On Monday, August 20, 2001, MS. Testa “asked” Ms. Wallis to work at the PNE. She says that Ms. Wallis refused with the words the “PNE is not my environment.” Ms. Testa then had to go the PNE herself and was, therefore, unable to attend to other duties. Ms. Testa reminded her that she was hired to do sales and that the PNE was part of her duties.
- The work Ms. Wallis was asked to do at the PNE was similar to the work she did at the office and was the kind of work she was hired to do.

- Ms. Wallis attended to her duties at the office. Before she left, Ms. Testa told Ms. Wallis to call her on her cell phone because she “needed to know who was going to work there [the PNE] tomorrow.” When she called, Ms. Wallis said that “I thought about it, and I guess I can do it.”
- On the morning of August 21, 2001, Ms. Wallis gave two weeks’ notice of her intention to quit. She did work at the PNE on that day.
- In the evening of August 21, Ms. Testa, in the meantime having received legal advice regarding the refusal, called Ms. Wallis and terminated her employment based on her refusal to perform her duties at the PNE on August 20.

As pointed out by the Appellant, there are numerous factual errors in the Determination. The Delegate found that Ms. Wallis worked at the PNE on August 20 and did not refuse to work there. In my view, the Determination cannot stand.

I agree with the Employer that a single incident of insubordination may, in the appropriate circumstances, be sufficient to constitute cause for termination (see, for example, *Strataco. Management Ltd.*, BCEST #D560/97 and *Fluid-Tech Hydraulics Ltd.*, BCEST #D260/96). In this case, Ms. Wallis refused to comply with a clear direction from her employer without any lawful excuse and was, in my view, terminated for cause and, therefore, not entitled to compensation for length of service.

In all of the circumstances, and the evidence before me, I am persuaded that the Delegate erred in her conclusions and, therefore, the appeal is granted.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated May 31, 2002, be cancelled.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal