

An appeal

- by -

John M. Harvey
("Harvey")

- 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: M. Gwendolynne Taylor

FILE No.: 2002/412

DATE OF DECISION: October 23, 2002

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the Employment Standards Act (the "*Act*") brought by John M. Harvey ("Harvey") of a Determination issued on July 4, 2002 by the Director of Employment Standards (the "Director"). Harvey had filed a complaint with the Director against his former employer, Adesa Auctions Canada Corporation ("Adesa"). The Director found that Harvey had not demonstrated that Adesa had contravened any provisions of the Act. The Director ceased investigating the complaint and closed the file.

On July 29, 2002, Harvey filed an appeal with the Tribunal asking that the case be referred back for further investigation on the grounds that there were facts that were not considered.

Harvey had also filed a claim through the Small Claims Court and was unsure, at the time of filing the appeal, whether he would proceed in Court or before the Tribunal.

The Tribunal processed the appeal, received submissions from Adesa and the Director, forwarded those submissions to Harvey, and received a further submission from Harvey on September 15, 2002. It may be that Harvey still has a proceeding before the Small Claims Court. However, the Tribunal has forwarded this appeal to me for determination based on written submissions and, since Harvey has not confirmed that he wants to discontinue this appeal, I am rendering a decision.

ISSUE

Does Harvey have grounds to seek compensation or any other statutory remedy against Adesa, arising out of his employment?

BACKGROUND

Harvey's most recent employment with Adesa was from October 2000 to December 11, 2001, as a transport driver at the rate of \$8.50 per hour at the time of termination. When he was terminated, Adesa paid him 2 weeks wages in lieu of notice. The Director found that Harvey's complaints were mainly directed to the way the company manages its business and that he took exception to being terminated, claiming it was unfair dismissal. The Director noted that Adesa had paid the compensation required by section 63(3)(a)(ii).

In his complaint before the Director, Harvey listed a number of alleged violations which he submitted supported his view that he had been unfairly dismissed. The Director referred to each of these and found in some instances that the employer was in compliance, in some instances that there was insufficient evidence to support the alleged contravention and in some instances the sections were interpretative only.

Concerning section 63, Harvey had stated:

Termination of employment. (Sub sect 3) (c) Just Cause.

Liability not discharged, there being **no just cause**. Liability only deemed to be discharged if dismissed for just cause.

The Director noted that the employer had paid compensation in lieu of notice.

In the appeal, Harvey provided statements from people who worked at Adesa when he did, attesting to his good performance.

ANALYSIS

Section 63 of the Act states:

Liability resulting from length of service

- 63** (1) After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week's wages as compensation for length of service.
- (2) The employer's liability for compensation for length of service increases as follows:
- (a) after 12 consecutive months of employment, to an amount equal to 2 weeks' wages;
 - (b) after 3 consecutive years of employment, to an amount equal to 3 weeks' wages plus one additional week's wages for each additional year of employment, to a maximum of 8 weeks' wages.
- (3) The liability is deemed to be discharged if the employee
- (a) is given written notice of termination as follows:
 - (i) one week's notice after 3 consecutive months of employment;
 - (ii) 2 weeks' notice after 12 consecutive months of employment;
 - (iii) 3 weeks' notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 weeks' notice;
 - (b) is given a combination of notice and money equivalent to the amount the employer is liable to pay, or
 - (c) terminates the employment, retires from employment, or is dismissed for just cause.
- (4) The amount the employer is liable to pay becomes payable on termination of the employment and is calculated by
- (a) totalling all the employee's weekly wages, at the regular wage, during the last 8 weeks in which the employee worked normal or average hours of work,
 - (b) dividing the total by 8, and
 - (c) multiplying the result by the number of weeks' wages the employer is liable to pay.
- (5) For the purpose of determining the termination date, the employment of an employee who is laid off for more than a temporary layoff is deemed to have been terminated at the beginning of the layoff.

The effect of this section is that an employer may dismiss an employee with just cause and not have to pay any compensation, or an employer may terminate for any reason, without just cause, and pay compensation based on the length of service.

It my view, Harvey has misinterpreted the section when he states “Liability only deemed to be discharged if dismissed for just cause.” Clearly, liability is discharged by giving a combination of notice and compensation.

I find that Adesa complied with their statutory requirement when it terminated Harvey’s employment. I have considered Harvey’s total submission and the comments made by the other employees on his behalf. There is no discernible contravention made out against Adesa.

Accordingly, I find that the Director did not err and I decline to cancel or vary the Determination.

ORDER

Pursuant to section 115 of the *Act*, I confirm the Determination issued July 4, 2002.

M. Gwendolynne Taylor
Adjudicator
Employment Standards Tribunal