

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-

Michael Pritchard  
("Pritchard ")

-of a Determination issued by -

The Director Of Employment Standards  
( the "Director")

Adjudicator: Paul E. Love

File No.: 98/464

Date of Hearing: October 19, 1998

Date of Decision: October 22,1998

## DECISION

### OVERVIEW

This is an appeal by Michael Pritchard of a Determination dated June 29, 1998. The delegate found that the employer established just cause for the dismissal and that Mr. Pritchard was not entitled to any compensation for length of service. The delegate also rejected the employee's claim for unpaid wages in the amount of \$900. There was no error demonstrated in the Determination, and I confirmed the Determination.

### ISSUES TO BE DECIDED

Was Mr. Pritchard wrongfully dismissed?

Was Mr. Pritchard entitled to payment of wages in the amount of \$900?

### PROCEDURE

This hearing was scheduled for an earlier date when the employer was unable to be present. This hearing was heard in part by an adjudicator, who subsequently was hospitalized and unable to complete the decision. As a result the hearing was rescheduled and the employee, resident now in Squamish, was permitted to attend by teleconference. The employee affirmed his evidence. The employer was present and gave sworn evidence. Each party asked questions of the other. During the hearing the employer presented documents which were marked as Exhibits 2 and 3 which were not previously disclosed. I provided these documents to Mr. Pritchard by fax and allowed him to comment in writing on these documents by the close of business on October 20, 1998. Mr. Pritchard submitted a further written submission.

### FACTS

:-the Determination reads as follows:

I have now completed my investigation of your Employment Standards Act complaint against Fountain Tire.

your complaint you alleged that the employer withheld \$900 at the start of your employment, and that your employment was terminated without notice of payment or compensation for termination without cause.

I have completed my investigation into these allegations. These are my findings

In discussions with Mr. John Scarpino and S. Debbie McKay of the payroll division in Edmonton, she advises that all holdbacks were cleared and you had no outstanding wages. Mr. Scarpino advised that you were warned in writing, Exhibits " A, B, C". As your termination was for "just cause" the matter is herewith resolved.

Your complaint will now be closed on our file.

Mr. Pritchard was dismissed from his employment as an automotive diagnostician with Fountain Tire Ltd.. He had been employed continuously with the employer, who was a successor to a franchise outlet with a similar name. He was employed for 3.5 years at the same location in Nanaimo, British Columbia. He commenced his employment on August 9, 1994. He was terminated on January 28, 1998.

The employer's manager, John Scarpino, testified that Mr. Pritchard was an employee who he inherited when he took over the operation on April 17, 1997. He testified that he gave Mr. Pritchard three written warnings dealing with his work performance on November 6, 1997, November 21, 1997 and January 28, 1998. Each of the first two written warnings indicate that the employer considered the conduct serious and that a repetition of the conduct could result in his dismissal. Mr. Pritchard was dismissed on the third incident. The incidents relate to carelessness in the carrying out of duties and diagnostic errors. The errors gave rise to serious customer complaints and cost the employer some money to rectify each complaint. The employer testified that these errors were significant ones, embarrassing to the company, and which should not have been made by a diagnostic technician who represented that he had 15 to 20 years of experience.

The employer testified that he had just identified three of the most serious complaints. He indicated that help was available to Mr. Pritchard if he needed help.

Mr. Pritchard denied involvement in the incident for which he was warned on November 21, 1997. He said that he was dismissed because of a personality conflict with another employee. He failed to question the employer with regard to that allegation at this hearing.

The Director's delegate found that cause was made up. There were no errors that were demonstrated by Mr. Pritchard in the decision made by the delegate. The hearing was in effect a rehearing of the matter. There was a conflict in the evidence between the parties on the issue of whether the employee had been given copies of the written notices. The employee testified that he did not receive copies. He was aware of the substance of the first and third complaint. He denies

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he was the person who caused the second customer complaint. I have applied the case of Falona v. Chornx (1951) 4 W. W.R. (N.S.) 171 (B.C.C.A.), and find that the employer's version is the version that fits with the preponderance of the probabilities, and is the most cogent explanation of the disputed facts.

The employer sought to prove the second complaint related to a pre-purchase compression test. He tendered a copy of the written compression test which he says was in the handwriting of Mr. Pritchard. He also tendered a sample of Mr. Pritchard's handwriting. Mr. Pritchard was given an opportunity to consider the handwriting on the compression test and he was unable to comment on whether the handwriting on the inspection sheet tendered was in his handwriting. I note that Mr. Pritchard was given a written warning related to that issue. He does not appear to have taken issue with that warning at that time. He does not recall this incident and does not believe he was responsible. I accept the employer's version of the facts based on his oral testimony. I make no finding with regard to whose handwriting was placed on the written pre-purchase compression test.

Mr. Pritchard further alleges that he was not paid the sum of \$900.00 by the employer because the employer advanced the money and then made a series of payroll deductions to collect the sum. The sum was fully collected by August 19, 1995. There is no evidence that Mr. Pritchard disputed this collection by the employer of the advance.

The employer's version, obtained by Mr. Scarpino from the payroll department was that the employee started working on August 5, 1994. He was advanced the sum of \$900.00 before his first paycheque. The pay period for the first cheque ended on August 20, 1994. The advance was made on August 24, 1994. The cheque for the first pay period was issued on September 2, 1994. Every two weeks thereafter a paycheque was issued. The employer also noted that the employee was paid by Hub City until August 13, 1994 as a consultant.

Although the employee proved that he was advanced and had repaid the sum of \$900, he did not prove that he was entitled to payment of that sum as wages. He supplied no source documents indicating that he was missing pay from any particular pay period.

## ANALYSIS

The burden is on the employee in this case to show that there was an error in the Determination such that I should vary or cancel the Determination. Although the Determination was very brief, I was pointed to no errors by Mr. Pritchard.

Issue # I: Cause for Termination:

I do not accept Mr. Pritchard's allegation that he was terminated because of a personality conflict. This is not supported by any evidence, and he did not question or cross-examine Mr. Scarpino on this point.

The employer appears to have followed a progressive discipline method. A standard of performance was communicated to Mr. Pritchard in the warnings. The mistakes made by Mr. Pritchard, according to the employer, were elemental and not to be expected of a person with 15 to 20 years experience. I find that the employer did have cause for the dismissal. Since the employer had just cause for the termination, the employee is not entitled to compensation for length of service pursuant to section 63(3)(b) of the *Act*.

Issue #2: Payment of Pay:

With regard to the advance issue, the most cogent explanation is that Mr. Pritchard was advanced the sum of \$900, at his request prior to the issuance of the first pay cheque. The funds were repayable by payroll deduction over a number of months. I do not see any error.

ORDER

Pursuant to section 15 of the *Act*, I order that the Determination in this matter, dated June 29, 1998 be confirmed

Paul E. Love  
Adjudicator  
Employment Standards Tribunal