

An appeal

- by -

Milorad Danilovic

- 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:** Carol L. Roberts

**FILE No.:** 2002/468

**DATE OF DECISION:** November 12, 2002

## DECISION

This is a decision based on written submissions by Milorad Danilovic, and by Wendy Jones on behalf of the Director of Employment Standards.

### OVERVIEW

This is an appeal by Milorad Danilovic, pursuant to Section 112 of the Employment Standards Act ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued August 13, 2002. The Director found that Intercon Security Limited ("Intercon") had not contravened the Act, and ceased investigation of Mr. Danilovic's complaint.

### ISSUE TO BE DECIDED

Whether the Director erred in determining that Intercon had not contravened the Act. Mr. Danilovic alleges that Intercon falsely promised him full time work, contrary to s. 8 of the Act and failed to pay him compensation for length of service.

### FACTS

Mr. Danilovic worked as a security guard for Intercon from May 11 to May 18, 2002. He filed a complaint alleging that he had been offered full time (40 hours per week) employment commencing May 4, 2002, and that he quit a full time job with another security firm to work for Intercon. Mr. Danilovic told the delegate that, although he had entered into a written employment agreement with Intercon, Intercon later changed both the start date and the number of guaranteed hours of work. Mr. Danilovic advised the delegate that he never got a copy of the agreement at the time he signed it, and that the agreement was not signed until April 19, rather than the April 17 date identified on the agreement.

Mr. Danilovic contended that he never received any hours of work until May 11, and that, on May 21, he was told he was being let go because he had been discovered sleeping on his May 15 shift.

Intercon advised the delegate that all new hires are asked to indicate their availability, but that it gives no guarantees on the number of hours of work. Intercon indicated that it did not commit to providing either fixed hours or fixed sites to new employees until they spend time in a "floater pool" to determine their suitability at various positions. Intercon also advised the delegate that a start date would be dependent on the license transfer, as well as the successful completion of the hiring process.

Intercon indicated that Mr. Danilovic successfully underwent an assessment process on April 16, and an orientation process on April 19, after which the parties entered into an employment agreement.

Intercon provided Mr. Danilovic with 8 hours paid basic training on May 2. Because Mr. Danilovic was working for another security firm at the time, Intercon advised him that he would have to quit his employment with the other firm, since it did not allow employees to be licensed with two firms. Intercon applied for the security licence transfer, and arranged for Mr. Danilovic to attend to scheduling, and obtain a uniform. Mr. Danilovic obtained his uniform on May 9, and received full time hours during the period May 11 to 18.

Intercon stated that it terminated Mr. Danilovic because he was found sleeping on a job site by one of its employees.

Following an investigation of Mr. Danilovic's complaint, the delegate concluded that Intercon had not falsely represented employment to Mr. Danilovic. She concluded that there was no evidence supporting Mr. Danilovic's contention that Intercon had agreed to May 4 start date and full time hours. However, she noted that he in fact obtained full time hours effective May 11, one week later.

The delegate also noted that Mr. Danilovic was working for another security firm until Friday May 3, and that Intercon sent the security licence transfer application, along with applicable fees, to the licensing body in Victoria on Monday, May 6. Mr. Danilovic met with Intercon's scheduling department and obtained a uniform on May 9. He was assigned his first shift May 11.

Further, the delegate concluded that Mr. Danilovic was let go because he was discovered to be sleeping on his shift. She accepted the evidence of three witnesses who observed Mr. Danilovic sleeping on his shift. However, she also concluded that, because Mr. Danilovic was employed for less than three months, Intercon was not obliged to provide him with working notice or compensation for length of service.

## **ARGUMENT**

Mr. Danilovic identifies no grounds of appeal in his appeal form. However, in a letter attached to the appeal, he alleges incompetence and unprofessionalism of the director's delegate. These do not form a ground of appeal, and I have not considered the allegations except where they may disclose bias, errors of fact, or a failure to consider relevant facts.

Mr. Danilovic argues that, according to the Security Program division of the Ministry of Safety and Solicitor General, and employer can submit applications for the transfer of an employees' security licence before the employee stops working for another company.

He also contends that the delegate did not consider the fact that Intercon failed to provide him with an identification Card, which they are obliged to do under the Private Investigators and Security Act.

Although Mr. Danilovic does not expressly say so, I infer that this card is essential for him to carry out his job duties.

Mr. Danilovic's letter of appeal is, in essence, a recitation of the information provided to, and reviewed by, the delegate. It contains no new information or evidence. In it, he acknowledges that he met with Intercon's manager on April 19. He contends that, on that day, he signed an agreement that stated he would be working 40 hours per week effective May 4, and that he was asked to have his then employer complete a security licence transfer form and fax it to Intercon. Mr. Danilovic apparently did not obtain or keep a copy of the written agreement at that time.

Mr. Danilovic states he gave his then employer the transfer form, along with 14 days notice of his intention to quit.

On May 3, Mr. Danilovic stated he went to Intercon's office to inquire into his employment status. He was told that Intercon had not obtained the licence transfer form, and gave him another one to complete. Mr. Danilovic returned the completed form to Intercon that day. He says he was advised Intercon would fax it

to Victoria that day. Mr. Danilovic called Intercon offices on Monday, May 6 and Tuesday May 7, and visited the office on May 8. He was advised that Intercon had mailed the transfer form and had not received any response from Victoria at that time. He says he was advised that Intercon would call the Victoria office to determine whether the transfer application had been approved, and that, if it was, Mr. Danilovic would be contacted for scheduling. Mr. Danilovic stated that he was called that afternoon for an appointment the following day. On May 9, Intercon outlined its policies and procedures to Mr. Danilovic, and obtained a uniform. On May 10, Mr. Danilovic was given 8 hour shifts for May 11, 12 and 13. Mr. Danilovic was also scheduled for 8 hour shifts on May 15, 17 and 18. Mr. Danilovic's employment was terminated on May 21.

The delegate submits that she conducted a thorough investigation, speaking to Mr. Danilovic a number of times, discussing his complaint at length. She notes that Mr. Danilovic gave her names of two witnesses whom he stated would corroborate his allegations. The delegate spoke to these witnesses, and says that they did not corroborate Mr. Danilovic's allegations, nor did any of Intercon employees. She seeks to have the Determination upheld, on the grounds that Mr. Danilovic provides no evidence supporting his appeal.

## ANALYSIS

The burden of establishing that a Determination is incorrect rests with an Appellant. On the evidence presented, I am unable to find that burden has been met.

Section 8 of the Act provides as follows:

*An employer must not induce, influence or persuade a person to become an employee, or to work or to be available for work, by misrepresenting any of the following:*

- (a) the availability of a position;*
- (b) the type of work;*
- (c) the wages;*
- (d) the conditions of employment*

The employment agreement entered into between the parties, which shows no evidence of being altered, is silent on the commencement date of employment. Although Mr. Danilovic contends that the date the agreement was signed was April 19, that does not take away from the fact that the agreement does not specify a commencement date.

Clause 5 of the agreement between Intercon and Mr. Danilovic states, in part, that "The employee's hours of work may vary from week to week and will be those hours of work necessary to meet Intercon's requirements within the limits prescribed by the Employment Standards Act...".

Therefore, the written document does not support Mr. Danilovic's contention that the parties agreed he would be guaranteed a 40 hour work week commencing May 4.

Mr. Danilovic did not provide the delegate with any evidence in support of his position, and the delegate determined, after reviewing the document and speaking with both Mr. Danilovic and Intercon personnel, was unable to conclude that such an agreement was made. Mr. Danilovic provides no evidence, or

argument, on appeal to persuade me this conclusion is incorrect. Allegations of incompetence on the part of the delegate are not sufficient to establish there was an error.

I accept that, to some degree, the date of the hire was conditional on the government's approval of Mr. Danilovic's licence transfer, which was beyond Intercon's control, as well as Mr. Danilovic's successful completion of pre-employment assessments. Therefore, I do not find it plausible that Intercon would guarantee a start date in these circumstances. I note that the licence transfer form was not signed by Mr. Danilovic's former employer until May 3, and could not have been processed by Intercon any faster than it was.

Furthermore, although Mr. Danilovic does dispute the date the employment agreement was signed, he does not dispute that clause 1 of the agreement provides as follows:

### **Probationary Term**

The first (ninety) 90 calendar days of the Employees' employment with Intercon will constitute a probationary period so that both the Employee and Intercon will have an opportunity to determine the Employee's ability to perform the duties of and his/her suitability or the position of a Security Officer. During the probationary period, Intercon may, in its absolute discretion, terminate the Employee's employment for any reason.

Furthermore, section 63 of the Act sets out an employer's liability for compensation for length of service on termination of employment:

*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.*

The obligation to pay compensation for length of service arises only after 3 consecutive months of employment. Because Mr. Danilovic worked for Intercon for less than 2 weeks, Intercon did not breach the Act in not giving him notice or paying him compensation.

I deny the appeal.

### **ORDER**

I Order, pursuant to Section 115 of the Act, that the Determination dated August 13, 2002 be confirmed.

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**Carol L. Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**