

**EMPLOYMENT STANDARDS TRIBUNAL**  
In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act S.B.C. 1995, C.38*

- by -

Hood Sailmakers (N.W.) Incorporated

operating as

UK Sailmakers Northwest

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** John M. Orr

**FILE No:** 98/642

**DATE OF HEARING:** November 25, 1998

**DATE OF DECISION:** December 1, 1998

**DECISION**

**APPEARANCES:**

Tim Knight	On behalf of Hood Sailmakers (N.W.) Incorporated
John Giesbrecht	On his own behalf
Gerry Omstead	Delegate of the Director

**OVERVIEW**

This is an appeal by Hood Sailmakers (N.W.) Incorporated operating as UK Sailmakers Northwest ("Hood") pursuant to Section 112 of the Employment Standards Act (the "*Act*") from a Determination (File No. 088310) dated September 18, 1998 by the Director of Employment Standards (the "Director").

Hood hired John Giesbrecht ("Giesbrecht") in November 1995 to work for them in their sailboat equipment repairs and sales business. Giesbrecht was hired with some management responsibilities on the basis of an annual salary. In January of 1998 Hood announced to Giesbrecht that Giesbrecht would no longer have any management responsibilities and would be working on a commission only basis. Giesbrecht was not willing to accept this substantial change in his conditions of employment and resigned. Following a complaint and investigation the Director found that, pursuant to section 66 of the *Act*, a condition of Giesbrecht's employment was substantially altered and determined that his employment had been terminated by Hood without compensation.

Hood appeals on the grounds that the Determination was wrong to find that Hood had terminated Giesbrecht's employment because Giesbrecht quit his job during negotiations for a restructuring of the business and that no substantial change had in fact been made.

**ISSUE TO BE DECIDED**

The issue to be decided in this case is whether the Director made any error in determining that Hood had terminated Giesbrecht's employment by substantially altering a condition of employment.

**FACTS**

Giesbrecht was hired in November 1995 and the terms of his employment were witnessed in a document, dated November 2, 1995, which sets the "terms and conditions" of his employment. These terms and conditions are here summarized as follows:

1. an annual salary of \$32,000.00;

2. provisions for holidays and time off in lieu of overtime;
3. at 6 months an option for the employee to purchase an interest in the company;
4. management responsibility for the retail section of the Company and the rigging services. Other employees in this section would be under his management;
5. attendance at weekly management meetings;
6. provision limiting weekend work;
7. a right to purchase goods at discount;
8. employee to work exclusively for Hood;
9. use of Company vehicle for business;
10. after 6 months use of Company vehicle full time;
11. on sales trips accommodations and expenses paid by Company;
12. time and money available for upgrading skills and knowledge;
13. management of projects through to completion including control over purchases and sales.

Giesbrecht did not exercise his option to purchase a share in the business at the 6 month mark but the offer was extended and left open for him. He continued to work on salary under the terms set out above until January, 1998. On January 07, 1998 Hood delivered to Giesbrecht a letter which stated that the Company was not making a profit and was several months behind on rent. The letter stated that Company had decided to make a number of changes some of which would affect Giesbrecht.

The option to purchase a share in the business was unilaterally cancelled and Giesbrecht was advised that Hood had decided to make changes in the management structure of the business. Specifically the letter states that Tim Knight will assume management of all aspects of the business. Thereby removing from Giesbrecht all aspects of management contained in his contract dated November 02, 1995. The letter further states that Giesbrecht will no longer receive his salary and that he will be paid on a combination of piece work and commission sales basis.

Giesbrecht considered the letter overnight and had a discussion with Mr Knight the next morning. Knight testified that the letter was an opening offer in negotiations for a new contract but Giesbrecht testified that although there may have been some negotiation on minor aspects of the offer he was told that the new management structure and the commission basis were not up for negotiation. Knight did not deny this but felt the commissions would potentially be greater than the salary. At any rate, Giesbrecht was not willing to accept the new terms and resigned from the Company. Knight says he quit of his own choosing and therefore should not be compensated.

A letter was entered as evidence from the Company bookkeeper which stated that she had been advised in early January that Giesbrecht's job description would be changing. A letter was also submitted from another management staff member. Although much of the content is hearsay she did see the letter of January 07, 1998 and describes it as "outlining a new contract". She felt it was fair.

## ANALYSIS

Other than the letter from the bookkeeper, there was no new evidence before this Tribunal than was available and considered by the Director's delegate.

Section 66 of the *Act* states:

*If a condition of employment is substantially altered, the director may determine that the employment of an employee has been terminated.*

The term "condition of employment" is defined in section 1 of the *Act* as follows:

*"conditions of employment" means all matters and circumstances that in any way affect the employment relationship of employers and employees;*

The purpose of this appeal process is not to substitute the opinion of the Tribunal for the opinion of the Director. The facts found by the Director's delegate were substantially correct, even in light of the evidence given at this hearing, and he considered and applied correctly the provisions of section 66 of the *Act*. I see no reason on the facts or in law to disagree with the delegate.

Giesbrecht's status in the Company was unilaterally altered from being a member of the management team to a member of the commissioned sales staff. His option to purchase a share in the Company was cancelled. His salary was arbitrarily converted to commissions and his other benefits eliminated. Despite Mr Knight's evidence, I am satisfied that the letter of January 7, 1998 was not just the opening of negotiations. The other management staff member described it as "the new contract" and the bookkeeper had been advised that Giesbrecht's job description would be changing. The bookkeeper was obviously advised before the letter was delivered to Giesbrecht as he resigned the very next day. There would have been no point in giving the bookkeeper such a letter if Giesbrecht had already resigned. It was clear that management had unilaterally decided to substantially change the terms and conditions of Giesbrecht's employment.

On the facts of this case there is no doubt that the terms of employment were substantially altered. There was nothing presented at this appeal to demonstrate that the Director was in error in the Determination.

The employer asked that I order that interest not be paid on the amount due by way of compensation as any delays in this matter were not of his making. On a review of section 88 of the *Act* in my opinion the interest provisions are mandatory and not open to my discretion. In any case, the amount owing to Giesbrecht should have been paid on January 8, 1998 and the employer has had the benefit of that money, and the ability to earn interest on it, throughout the investigation and appeal process therefore it is only appropriate and fair that it be paid to Giesbrecht with interest as provided in the *Act*.

**ORDER**

I order, under Section 115 of the *Act*, that the Determination is confirmed.

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**JOHN M. ORR  
ADJUDICATOR,  
EMPLOYMENT STANDARDS TRIBUNAL**