

**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 -

Kazem Seyedalikhani  
("Seyedalikhani")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 97/674

**DATE OF HEARING:** November 19, 1997

**DATE OF DECISION:** November 21, 1997

**DECISION**

**APPEARANCES**

Kazem Seyedalikhani	on his own behalf
Bayne Vardy	on behalf of BC Furnace Service Ltd.
Grant Gayman	counsel for BC Furnace Service Ltd.

**OVERVIEW**

This is an appeal by Kazem Seyedalikhani (“Seyedalikhani”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated August 14, 1997 issued by a delegate of the Director of Employment Standards (the “Director”). Seyedalikhani alleges that the delegate of the Director erred in the Determination by concluding that BC Furnace Service Ltd. (“BCFS”) did not owe compensation for length of service to Seyedalikhani.

**ISSUE TO BE DECIDED**

The issue to be decided in this appeal is whether BCFS owes compensation for length of service to Seyedalikhani.

**FACTS**

The following facts are not in dispute:

- Seyedalikhani was employed by BCFS as a technician commencing June 13, 1994;
- Seyedalikhani was subject to seasonal layoffs;
- Seyedalikhani was laid off from May 23, 1996 to August 4, 1996;
- Seyedalikhani placed an advertisement in the name of “Armita - Gas Heating Services” in the Yellow Pages offering to provide the same type of services as those provided by BCFS;
- this advertisement was placed adjacent to an advertisement from BCFS;
- Seyedalikhani returned to work on August 8, 1996 and worked until he was injured on the job on October 29, 1996;
- Seyedalikhani received Worker’s Compensation wage loss benefits until the end of January 1997;

- Seyedalikhani was able to return to work on a “light duty” basis in January however, BCFS did not have any “light duty” jobs available;
- Seyedalikhani worked on a couple of jobs for himself in January 1997;
- Vardy called Seyedalikhani and requested that he attend a meeting on January 29, 1997;
- Vardy delivered a letter of termination to the home of Seyedalikhani on February 1, 1997 to advise that Seyedalikhani was terminated effective January 29, 1997;

Seyedalikhani testified and stated that:

- BCFS knew about his advertisement for “Armita” in the summer of 1996;
- he met with Bayne Vardy (“Vardy”), President of BCFS in mid September of 1996 and at the end of the meeting, he felt that Vardy understood that Seyedalikhani was not going to cancel or change his phone numbers to avoid getting calls for “Armita”;
- he did not promise Vardy that he would not perform any work for “Armita”;
- he did not perform any work for “Armita” until January 1997;
- he called the dispatcher from BCFS in late December 1996 and early January 1997 to advise them that he was available for “light duty” type of work;
- he was not called by BCFS to come in to work in January 1997.

Vardy testified on behalf of BCFS and stated that:

- he was satisfied after the meeting in mid-September 1996 that Seyedalikhani was not going to pursue or perform any work for “Armita” while working for BCFS;
- he suspected that Seyedalikhani was performing work for “Armita” in 1996 but was not able to substantiate that;
- in January 1997, he requested that one of his employees call the number listed for “Armita” and ask to have repairs made to a furnace;
- the employee reported back to him that Seyedalikhani had agreed to immediately perform the repairs requested;
- he called Seyedalikhani and asked him to come in for a meeting on January 29, 1997;
- at that meeting he advised Seyedalikhani that by performing work for “Armita” while he was employed by BCFS, he was in a conflict of interest and was going to be dismissed immediately;
- he hand delivered the letter outlining the reasons for termination of employment to the home of Seyedalikhani on February 1, 1997.

**ANALYSIS**

The burden of establishing that the delegate of the Director erred in the Determination rests with Seyedalikhani.

The liability on an employer to pay compensation for length of service is set forth in Section 63 of the *Act*. Section 63 provides that this liability may be discharged for a number of reasons, among which is when the employee is dismissed for just cause.

The issue of whether a conflict of interest by an employee is sufficient grounds to establish just cause for dismissal is canvassed at length in *The Law of Dismissal in Canada*, Second Edition by Howard A. Levitt, where at page 138 it states:

Competing with one's employer's interest is a just ground for dismissal. It is not a matter of degree. It makes no difference whether one competes just a bit or quite a lot. It does not even matter that the employer may not suffer from the competition or that the competition never comes to fruition."

It is clear from the evidence provided, that while Seyedalikhani and Vardy left the meeting in mid-September with differing understandings of what had been agreed to with respect to Seyedalikhani performing work for "Armita" while still employed by BCFS, Seyedalikhani did not perform any work for anyone other than BCFS until January 1997.

Even though BCFS was aware that Seyedalikhani had placed the advertisement in the Yellow Pages to perform the same type of services as BCFS, as a result of the mid-September meeting, Vardy was satisfied that Seyedalikhani did not intend to do any such work while employed by BCFS.

When BCFS began to suspect that Seyedalikhani was performing work for "Armita" in January 1997, they took steps to confirm that suspicion. As soon as their suspicions were confirmed by Seyedalikhani agreeing to perform work for the BCFS employee who masqueraded as a potential client, BCFS arranged the meeting with Seyedalikhani for January 29, 1997.

Based on the evidence and on the balance of probabilities, I conclude that a conflict of interest was created at the time that Seyedalikhani performed work for someone other than BCFS in January 1997 while he was employed by BCFS to perform the same type of work. This conflict of interest established just cause for the termination of employment of Seyedalikhani.

Seyedalikhani has not met the burden of establishing that the delegate of the Director erred in the Determination.

For all of the above reasons, the appeal by Seyedalikhani is dismissed.

**ORDER**

Pursuant to Section 115 of the *Act* I order that the Determination dated August 14, 1997 be confirmed in all respects.

---

**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**