

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 -

Ronald Kitt
("Kitt")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

Adjudicator: Hans Suhr

File No.: 97/737

Date of Hearing: November 21, 1997

Date of Decision: December 17, 1997

DECISION

APPEARANCES

Ronald Kitt	on his own behalf
Chris Kitt	observer
Gary Hailstone	on behalf of Valley Equipment Ltd.
Helena Greenough	on behalf of Valley Equipment Ltd.
Jennifer Hailstone	on behalf of Valley Equipment Ltd.

OVERVIEW

This is an appeal by Ronald Kitt (“Kitt”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated September 15, 1997 issued by a delegate of the Director of Employment Standards (the “Director”). Kitt alleges that the delegate of the Director erred in the Determination by concluding that he had resigned his employment and was therefore not entitled to compensation for length of service.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Valley Equipment Ltd., (“Valley”) owes compensation for length of service to Kitt ?

FACTS

The following facts are not in dispute:

- Kitt was employed by Valley as a sales manager;
- Kitt was paid up to and including March 31, 1997;
- the last day actually at work by Kitt was March 27, 1997 as he was off work on March 31 and April 1, 1997 due to illness;
- Gary Hailstone (“Hailstone”), the President of Valley contacted Kitt at home on April 1, 1997;
- Kitt attended the workplace on April 2, 1997 at which time he returned the company van, keys, cell phone, credit card(s) and lawn mower along with a hand written letter of resignation;

- the Record of Employment (“ROE”) subsequently issued by Valley on April 2, 1997 indicated that the reason for issuance was “Quit”;

Kitt testified and stated that:

- he has never quit in his life, although he has resigned a number of times;
- he was off work “sick” on March 31 and April 1, 1997 although one of the sales persons, George White, did contact him in regard to work related matters;
- in the telephone conversation with Hailstone on April 1 at approximately 2:00 p.m., Hailstone stated “I hear that you are thinking of resigning” to which Kitt replied “I’m thinking about it” and then Hailstone stated “I would like to have my van, keys, credit card and lawn mower returned” to which Kitt replied “I’ll bring it by tomorrow as I’m still sick”;
- he “blew up” at Hailstone after he was asked for the van, keys, credit card and lawn mower,;
- he swore at Hailstone and told him to stick it;
- he presented a letter of resignation to Hailstone on April 2, 1997 at approximately 7:45 a.m. and also returned the van, keys, credit card and lawn mower;
- he had no reason to quit his job.

Hailstone testified and stated that:

- over the last 3 to 4 years there had been a number of “run ins” with Kitt in regard to money;
- Kitt was being paid a base salary of \$3,000.00 per month plus bonuses;
- in mid March Kitt advised a co-worker George White that he would be able to get a job at another firm, Central Valley Equipment, whenever he wanted;
- on March 19, 1997, Kitt approached him and requested a bonus and a \$500.00 per month increase;
- the requested increase was denied;
- on March 27, 1997, Kitt requested that he be paid his vacation pay and also to take holidays;
- during this conversation with the payroll administrator, Helena Greenough, Kitt advised that he was thinking of resigning;
- prior to leaving work on March 27, 1997, Kitt had removed his personal belongings from his office;
- he had George White contact Kitt at home on April 1, 1997 to attempt to find out if Kitt had resigned;
- he personally called Kitt at home and asked “Is it true that you have resigned, and if it is, I would like to have the van, keys, credit card and lawnmower returned”;
- at that point, Kitt began to swear at him and told him to “stick it”;
- he told Kitt that’s enough and he would see him (Kitt) in court;

- he never did get an answer to the question of whether Kitt had resigned, however, the next day Kitt returned all of the company goods in his possession and also presented a letter of resignation;
- the period beginning April 1 is usually the busiest time of the year for Valley and he would have no reason for firing Kitt.

ANALYSIS

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

Section 63 of the *Act* establishes a liability on an employer to pay compensation for length of service to an employee after 3 months of employment, *unless*, that employee was given either written notice of termination or pay in lieu of such notice, dismissed for just cause, retires or terminates the employment by resigning.

As in the case at hand, the question often arises as to whether an employee has voluntarily resigned when he leaves his job after a confrontation with his employer. This issue is set forth in *The Law of Dismissal in Canada* Levitt, 2nd Edition, where at page 456 it states:

Adjudicators under the Ontario *Employment Standards Act* have held there to be a voluntary resignation if the following conditions exist:

1. Either a verbal resignation or an act establishing an intention to quit, *e.g.* asking for final pay cheque, including vacation, or making it clear the employee does not wish to work any longer for the company in a spasm of insubordination will suffice.
2. A carrying out of that intention by the employee.

The evidence of Kitt was that he swore at his employer, told his employer to “stick it” and returned all the company property the next day along with a written letter of resignation.

I must also consider Kitt’s evidence that he told others that he was thinking about resigning and in fact, he had been looking for another job for the past 2 years,

For all of the above reasons, based on the evidence provided and on the balance of probabilities, I conclude that Kitt resigned his employment. The liability on Valley to pay compensation for length of service pursuant to Section 63 of the *Act* has therefore been discharged.

The appeal by Kitt is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated September 15, 1997 be confirmed in all respects.

Hans Suhr
Adjudicator
Employment Standards Tribunal