

**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-

Robert Palmer

(“Palmer”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 97/708

**DATE OF DECISION:** December 9, 1997

## DECISION

### OVERVIEW

This is an appeal brought by Robert Palmer (“Palmer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on August 29th, 1997 under file number ER:066-689 (the “Determination”).

The Director dismissed Palmer’s complaints that Mountain Properties Ltd. (the “employer”) owed him, *inter alia*, unpaid wages and termination pay.

Palmer’s appeal is predicated on two principal assertions:

Firstly, that the employer’s payroll records, upon which the Director’s delegate relied, were “fabricated months after my dismissal”.

Secondly, apparently a tribunal (the Employment Insurance Board of Referees) appointed pursuant to the provisions of the federal *Employment Insurance Act*, following a telephone hearing, ruled that Palmer was entitled to employment insurance benefits and that he had not committed any “misconduct”. Palmer says that this decision, which has not been provided to the Tribunal, supports his argument that the employer did not have just cause to terminate him, and that the Board of Referees’ decision cannot be “negated” by a decision of the Director of Employment Standards.

### FACTS AND ANALYSIS

#### *Unpaid Wages, Unauthorized Deductions and Overtime*

The Director dismissed Palmer’s claims for regular wages, overtime and for reimbursement for unauthorized deductions after concluding that the employer’s payroll records did not disclose any unpaid wages or unauthorized deductions.

As noted above, Palmer says that the employer’s payroll records were “fabricated”, however, Palmer has not adduced *any* evidence to support this most serious allegation. As the appellant in these proceedings, Palmer bears the burden of proving that the Determination is in error--on this aspect of his appeal, there is simply no evidence before me upon which I could reasonably conclude that the Determination is in error.

#### *Compensation for Length of Service*

The Director’s delegate determined that the employer had just cause for termination, specifically, that Palmer has been guilty of insubordination by telling the employer’s president’s wife (and

Palmer's immediate supervisor) to "fuck off". Apparently, this incident was triggered when she had chastised Palmer for tardiness.

The employer also relied on certain job performance deficiencies to support its "just cause" allegation but this ground was expressly rejected by the Director's delegate in the Reason Schedule attached to the Determination.

According to the findings of fact made by the Director's delegate, Palmer had, on more than one previous occasion, sworn at the president's wife which in turn caused the employer's president to warn Palmer that another such incident would not be tolerated. Given those findings of fact, which are not specifically challenged by Palmer, I am satisfied that the Director's delegate did not err when he determined that the employer had just cause for dismissal.

The fact that a federal tribunal, which is mandated to interpret an entirely different statute and different statutory language, found that Palmer was not guilty of "misconduct" has no binding precedential effect on the Director or this Tribunal under the *Employment Standards Act*. In other words, the facts of this case do give rise to the application of the legal doctrine known as *res judicata*.

## **ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination in this matter be confirmed as issued.

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**Kenneth Wm. Thornicroft, Adjudicator**  
**Employment Standards Tribunal**