

**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 -

Altech Aluminum Ltd. dba  
Altech Aluminum Products Ltd., dba Altech Custom Coaters Ltd.  
("the "Employers")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Ib S. Petersen

**FILE No:** 1999/567

**DATE OF HEARING:** November 15, 1999

**DATE OF DECISION:** January 14, 2000



employer for the material time. In the result, I accept that Altech Aluminum Ltd. is the employer. This conclusion does not change the amount of compensation for length of service. The delegate awarded three weeks' to Lalonde which would appear to be one week less than he would be entitled to based on the assumption that he was employed from September 1994. Assuming he became employed by Altech Aluminum Ltd. by the end of December 1994 (as stated to the delegate), he would still have three years consecutive service.

Apart from his initial employment, until September 1998, Lalonde was employed as a helper and subsequently as an installer. In September 1998, he was laid off due to lack of work. It appears, however, that Lalonde and the Employer agreed to continue to employ him in the shop. He continued to work in the shop, apart from occasional installation work at the installer's rate, until his termination on December 11. Lalonde came to work on December 10, 1998. He was supposed to be going out on an installation job that morning. However, according to the Employer, when Lalonde found out that he was not installing that day, but was going to work in the shop that day, he went home, telling another employee that he "was going home to clean his apartment". Lalonde testified that he had a "sore arm and told the Employer that he wanted to go home and rest his arm". The next day, December 11, the Employer terminated his employment.

The Employer asserts that Lalonde quit when he left work on December 10. In any event, the Employer says that it had cause for terminating Lalonde's employment on December 11.

With respect to the first issue, whether Lalonde resigned, the Tribunal and the courts have recognized that a resignation given in the heat of an argument may not be valid. I agree with the adjudicator in *RTO (Rentown) Inc.*, BC EST #D409/97:

"Both the common law courts and labour arbitrators have refused to rigidly hold an employee to their "resignation" when the resignation was given in the heat of argument. To be a valid and subsisting resignation, the employee must clearly have communicated, by word or deed, an intention to terminate their employment relationship and, further, that intention must have been confirmed by some subsequent conduct. In short, an "outside" observer must be satisfied that the resignation was freely and voluntarily and represented the employee's true intention at the time it was given."

Even if I accept the Employer's version of the events, essentially that Lalonde was upset because he was reassigned from the installation job to shop work, and went home, I do not agree that Lalonde quit his employment. He clearly expected to come back to work the following day. He was told he was terminated when he came to work.

The issue of cause for termination was, in my view, an afterthought. There was evidence of discipline for failure to follow instructions, uncooperative attitude towards co-workers, unsafe work practices (from late September 1998) and other disciplinary letters from 1997, which I accept. There was no evidence that the Employer intended to terminate his employment except for the events on December 10.

In the result, except as noted, the appeal is dismissed.

**ORDER**

Pursuant to Section 115 of the Act, I order that Determination in this matter, dated August 30, 1999 be varied and confirmed, to the extent that the names of Altech Aluminum Products Ltd. and Altech Custom Coaters Ltd. be struck from the Determination.

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**Ib S. Petersen**  
**Adjudicator**  
**Employment Standards Tribunal**