

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act

- by -

Prairie Properties Ltd.
("Prairie")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 95/040

DATE OF DECISION: February 24, 1996

DECISION

OVERVIEW

This is an appeal by Prairie pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against Determination No. CDET 000330 issued by the Director on December 5, 1995. In this appeal Prairie claims that no compensation for length of service is owed to Maureen Pinsent (“Pinsent”) under Section 63 of the *Act*. Prairie further claims that the amount of compensation calculated on the determination is incorrect as Pinsent worked less than 40 hours per week.

Consideration of this appeal falls under the transitional provisions of the *Act*. Section 128(3) of the *Act* states:

If, before the repeal of the former Act, no decision was made by the director, an authorized representative of the director, or an officer on a complaint made under that Act, the complaint is to be treated for all purposes, including Section 80 of this Act, as a complaint under this Act.

FACTS

The information provided on the determination contains some inadvertent errors with respect to the dates, however, these errors do not affect the substance of the complaint filed by Pinsent.

Pinsent was employed by Prairie as a sales clerk. On August 23, 1995, Pinsent approached her new manager and requested that she be able to take her scheduled shift for Sunday August 27, 1995 as another day off. The reason given by Pinsent to her manager was that she had the opportunity to use a condominium at Mt. Washington and that she would really appreciate having the 27th off. Pinsent did not work on August 27th and upon her return to work on August 28th, she was informed that her employment had been terminated as she did not show up for work as scheduled on August 27th.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether the employer's liability to pay compensation for length of service has been discharged under Section 63(3)(c) of the *Act*. That is, has Prairie demonstrated, on the balance of probabilities, that Pinsent was dismissed for just cause.

ARGUMENTS

Prairie argues that Pinsent is not entitled to compensation as she absented herself from work on her scheduled shift on August 27, 1995 and was therefore dismissed for just cause. The Director contends Prairie has not provided adequate information to substantiate dismissal for just cause.

ANALYSIS

The burden of proof for establishing that Pinsent was dismissed for just cause rests with Prairie. Prairie has not provided sufficient evidence to substantiate its contention that Pinsent absented herself from work without permission. Pinsent alleges that the manager granted her permission to take August 27th as a day off. Prairie denies that any such permission was granted and further makes reference to statements alleged to have been made by Pinsent to "other employees" and "the manager" which purport to support Prairie's version of the events. No objective evidence with respect to these statements was put before this panel. It is more likely that Pinsent left work on August 24, 1995 with the belief that she had been granted permission to take August 27th as a day off. In any event, an incident of this type of misconduct by an employee, that is, a misunderstanding between an employee and the manager, does not warrant dismissal. I conclude that Prairie did not have just cause to terminate Pinsent's employment

Pinsent was employed for an average of 28 hours per week during her last 8 weeks of employment at a rate of \$8.50 per hour.

For the above reasons, I conclude that Prairie owes compensation pay to Pinsent in the amount of **28 x \$8.50 x 2 = \$476.00.**

ORDER

Pursuant to Section 115 of *Act*, I order that Determination No. CDET 000330 be varied as set forth in this decision.

Hans Suhr
Adjudicator
Employment Standards Tribunal

February 23, 1996

Date