

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-

Rick Shram operating as It's Rick's Window Cleaning

("Shram" or the "employer")

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 98/708

DATE OF DECISION: February 2, 1999

DECISION

OVERVIEW

This is an appeal brought by Rick Shram, operating as “It’s Rick’s Window Cleaning” (“Shram” or the “employer”), pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on October 19th, 1998 under file number 076405 (the “Determination”).

The Director determined that Shram owed his former employee, Roy K. Richt (“Richt”), the sum of \$497.27 on account of one week’s wages as compensation for length of service [see section 63(1)], minimum daily pay for Richt’s last day of work (see section 34) and interest (see section 88). The Director’s delegate rejected the employer’s contention that Richt was terminated for just cause.

ISSUES TO BE DECIDED

In a letter appended to his notice of appeal filed November 12th, 1998, Shram set out the following reasons for appeal:

- “Lengthy 18 month delay by Employment Standards Branch”;
- “Bias investigative practices”;
- “Contradictory statements by complainant in rebuttal process”;
- “Employment Standards Branch breaching confidentiality with myself and Office of the Ombudsman”.

It should be noted that the appellant apparently does not challenge, at least explicitly, the delegate’s finding that the employer did not have just cause to terminate Richt’s employment on or about March 26th, 1996.

FACTS AND ANALYSIS

The employer’s reasons for appeal are more fully particularized in a written submission to the Tribunal dated December 21st, 1998. I shall deal with each of the employer’s allegations in turn.

While, undoubtedly, this investigation was delayed--Richt’s employment was terminated in March 1996 and the Determination was not issued until October 1998--it also appears that at least some of the delay can be attributed to the employer’s failure to promptly comply with the investigating officer’s various document requests made during the course of the investigation. For example, the delegate originally wrote to the employer on July 8th, 1996 but the employer did not respond until September 12th, 1996, some two months later. In October 1996 the delegate wrote to the employer--this letter was incorrectly dated September 23rd, 1996--and requested that the

employer provide the names of certain witnesses. The employer did not respond to this request and thus a follow-up request was made, in writing, by the delegate in late January 1997 to which the employer similarly did not reply. I might add that there is no evidence before me to suggest that the delay in this case prejudiced the employer's ability to defend himself against the employee's complaint; indeed, at least some of the delay was incurred as a result of giving the employer the fullest opportunity possible to explain his position.

There is no evidence before me to suggest that the investigating officer was in a conflict of interest (say, by reason of some past or present relationship with the complainant employee) or that the delegate said or did anything during the investigation which would suggest he had prejudged the employee's complaint. Thus, I find the bias allegation to be wholly without any legal foundation.

The delegate did have conflicting statements from both the employer and the employee in this case. Certain findings of fact were made; I cannot conclude that these findings were in error. As correctly noted by the delegate in the Determination, the onus of proving just cause for termination lies with the employer; the delegate was not satisfied that the employer met its onus of proof and neither am I. Presumably, the employer maintains that the employee was terminated for insubordination, however, the evidence before me falls well short of proving insubordination.

Finally, the appellant's claim that the Employment Standards Branch violated some sort of undertaking regarding the confidentiality of communications between the employer and the Ombudsman's office is not a matter over which I have any jurisdiction. I might add, in any event, that this complaint has already been investigated by the Ombudsman and in a letter to the employer dated June 30th, 1998 the Ombudsman concluded that any disclosure that might have been made did not "in any way [affect] the outcome of the dispute".

ORDER

Pursuant to section 115 of the *Act*, I order that Determination be confirmed as issued in the amount of **\$497.27** together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal