

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 -

Brewsky's Pub Ltd.

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: John M. Orr

FILE No: 1999/651

DATE OF HEARING: January 10, 2000

DATE OF DECISION: January 24, 2000

DECISION

APPEARANCES:

Rod Egerton	on behalf of Brewsky's Pub Ltd.
Desiree Albrecht	On her own behalf
Ray Stea	Delegate of the Director

OVERVIEW

This is an appeal by Brewsky's Pub Ltd. ("Brewsky's") pursuant to Section 112 of the Employment Standards Act (the "Act") from a Determination (No. 085675) dated October 07, 1999 by the Director of Employment Standards (the "Director").

Brewsky's is a neighbourhood pub in which Desiree Albrecht ("Albrecht") was employed for about two years. She was dismissed on or about April 01, 1999. The Director found that there was not just cause for the dismissal and determined that Albrecht was entitled to compensation for length of service. Brewsky's appeals that determination on the grounds that there was just cause for dismissal.

ISSUES TO BE DECIDED

The issue to be decided in this case is whether Brewsky's had just cause to dismiss Albrecht.

THE FACTS AND ANALYSIS

Albrecht worked for Brewsky's for about two years. Rod Egerton ("Egerton"), the owner operator, testified that in many respects she was a good employee. She worked hard, she was willing to work extra hours and she was honest. However, Egerton testified that in the last year of her employment Ms Albrecht's attitude at work declined. He says that he received a large number of complaints from customers and other staff. He says that he brought this to her attention and about one week before her dismissal he gave her a strong verbal warning. The final straw was when he received a written complaint from two customers and he decided to fire Ms Albrecht.

his Tribunal has on many occasions set out the tests for just cause dismissal. The onus is on the employer to demonstrate that (1) reasonable standards of performance have been set and communicated to the employee; (2) the employee was warned clearly that his or her continued employment was in jeopardy if such standards were not met; (3) a reasonable period of time was given to the employee to meet such standards; and (4) the employee did not meet those standards.

In this case Egerton says that Albrecht must have known the standards because of her 20 years of working in the service industry. He says that he brought her shortcomings to her attention on at

least 6 occasions before the dismissal and that he told her she could not continue to work at Brewsky's if she didn't improve her attitude. Ms Albrecht quite honestly testified that she knew her job was in jeopardy and conceded that she had been spoken to on several occasions. However she says that it was never made specifically clear to her what the problems were so that she could alter her behaviour to correct any problems. She says that her employer complained about her attitude but did not give any specific examples or details. She says she was shocked when she was actually fired.

Egerton concedes that he can not recall any specifics of his conversations with Ms Albrecht. He was not able to say whether he had specifically told her she might be fired and he did not show her any of the customer or staff complaints. He agrees that he told her that she had a negative attitude.

While a poor attitude may be grounds for dismissal, *Re: Morrey Nissan, a division of White Spot Service Ltd.* [1997] BC EST #D046/97, an employee who is accused of having a bad attitude should be provided with specifics so that she has a reasonable opportunity to remedy the situation. In this case it was never made clear to Albrecht exactly what the complaints were about. As set out above, the employer must be able to show that the expected standards of behaviour are made clear to the employee and that she is given a reasonable opportunity to comply. In this case such process was not followed and therefore the employer has not met the burden of establishing just cause for dismissal.

It is also important to note that the employer also bears the burden of establishing that the Determination is wrongly decided. In this case I am not satisfied that the employer has met such burden and therefore the Determination is confirmed.

ORDER

Pursuant to Section 115 of the *Act* I order that the Determination is confirmed.

John M. Orr
Adjudicator
Employment Standards Tribunal