

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the

*Employment Standards Act* S.B.C. 1995, C. 38

- by -

Frog Telecom (BC) Ltd.

("Frog Telecom")

- of a Determination issued by -

The Director Of Employment Standards

(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE NO.:** 96/066

**DATE OF DECISION:** March 13, 1996

## DECISION

### OVERVIEW

This is an appeal by Frog Telecom (BC) Limited ("Frog Telecom") pursuant to Section 112 of the *Employment Standards Act* ("the *Act*") against Determination No. DDET 000046, and Determination No. CDET 000489, issued under the authority of the Director of Employment Standards and dated December 18, 1995. The Determinations were issued as a result of a complaint by Susan Henderson ("Henderson"), a former employee of Frog Telecom. The employer claims that the Determinations are in error, that no compensation is owed Henderson, she having been dismissed for just cause.

I have reviewed the written submission of Frog Telecom, information provided by the Director in support of the Determinations. I have concluded that Henderson was wrongfully dismissed by Frog Telecom and that she is entitled to compensation as calculated by the Director.

### FACTS

Frog Telecom is in the adult entertainment business and Henderson was hired by the company in 1994 as a one-on-one telephone agent.

On November 8, 1994, Henderson signed a memo informing her that as a telephone agent she was expected to answer a telephone, as the document says, "upon one ring" and that she understood that a failure in that regard "can and will result in immediate dismissal" (emphasis added).

On January 2, 1995, Henderson was given what the employer calls a 'verbal' warning, for having left her booth without finding a replacement. The warning, actually written, has the words "ANY VIOLATIONS TO FOLLOW WILL BE ISSUED IN WRITTEN FORM" at its top and "this will be the final verbal warning notice" above the employee's signature at the bottom.

On April 11, 1995, Henderson left her telephone off the hook and for that she received a "Warning Notice". Four disciplinary options are listed on the notice, verbal warning, written warning, probation and suspension, and a check-mark indicates that this particular warning was another 'verbal' warning.

On July 25, 1995 Henderson signed a "COMPANY POLICIES" document, a list providing "examples of actions that can result in immediate termination". Two of the examples listed are a "failure to answer the phone" and "keeping your phones off the hook". That same document lists "unsatisfactory performance" as something that "can result in disciplinary actions".

Henderson was dismissed on August 3, 1995, for what the employer describes as violation of "company policies, rules, etc.". The specific reason given is she had been found with her telephone off its hook.

Henderson filed a complaint which led to the Determination numbered DDET 000046 and to CDET 000489, issued under the authority of the Director of Employment Standards. The employee was found to have been terminated "without just cause and without notice", and was awarded two weeks' compensation, \$720.00.

### **ISSUE TO BE DECIDED**

The issue is whether Henderson was dismissed for just cause.

### **ANALYSIS**

As the employer, it is up to Frog Telecom to show just cause. That requires clear rules and standards, made known to the employee, and consistent enforcement on the part of the employer. Underlying the Determinations is a finding of no evidence that rules and policies were unambiguously expressed and consistently enforced. I find rules that are in conflict and therefore unclear, and I agree, consistent enforcement has not been shown.

The employer must, moreover, have reasonable rules and apply them reasonably. A telephone may not have been answered quickly but there may be a valid reason for that and should there be none, it is, at worst, a minor offence that has been committed. Rules that call for dismissal given such an infraction are not reasonable rules. And if the rules, such as they are, are to be applied reasonably, then progressive discipline must be applied, so that an employee has a chance of meeting standards, and clear warning must be given that a further breaching of the rules will lead to dismissal. I see no evidence of either, no clear warning, no progressive discipline, even though it is progressive discipline that Henderson would logically expect given the warning memo of April 11, 1995 and its mention of verbal warnings, written warnings, probation and suspension. Indeed the hard evidence is of an employer which thinks that progressive discipline is not required given Henderson's rule violation. The employer is wrong.

The final matter to consider is the seriousness of Henderson's infraction. Is it in itself reason for dismissal? In that regard I find that I am again in agreement with the Determinations. The consequence of a telephone being off its hook might have caused the employer some minor loss of income, but that is all I conclude, no evidence to the contrary. I see nothing which warrants immediate dismissal.

The Director of Employment Standards has issued two Determinations in which Henderson is found to have been dismissed without just cause and without notice and entitled to compensation. I agree. The Determinations are confirmed.

**ORDER**

I order that Determination No. DDET 000046 and Determination No. CDET 000489 be confirmed, as Section 115 of the *Act* provides.

*"Lorne Collingwood"*  
**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**

March 13, 1996  
**Date**

LDC:jel