

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 -

Apex Ventures Ltd. Operating As Snuggle Inn Motel
(“Snuggle Inn”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Lorna A. Pawluk

FILE NO.: 96/676

DATE OF DECISION: January 20, 1997

DECISION

OVERVIEW

This is an appeal by Apex Ventures Ltd. operating as Snuggle Inn Motel ("Snuggle Inn") pursuant to section 112 of the Employment Standards Act (the "Act") against Determination CDET #004501 of the Director of Employment Standards (the "Director") issued on October 30, 1996. In this appeal, the employer claims that Therese Potvin and Trudy Close were dismissed for just cause.

ISSUE TO BE DECIDED

The issue is whether the employer had just cause to dismiss Therese Potvin and Trudy Close.

FACTS

The employer operates a motel. Therese Potvin and Trudy Close were employed as housekeepers. Ms. Potvin was hired in May of 1994 and was fired on June 6, 1996 for not properly cleaning several rooms. Ms. Close who had previously worked for the Snuggle Inn was re-hired on September 18, 1995. She was dismissed on June 5, 1996 for not properly cleaning several rooms.

The Director's delegate concluded that the employer did not have just cause for termination and ordered payment of severance and vacation pay in the amount of \$287.42 for Ms. Close and \$75.59 for Ms. Potvin. They concluded that there was no progressive discipline and that the employees had cleaned the rooms to the usual standard of cleanliness.

In support of its appeal, the employer says that Ms. Close was re-hired on the condition that she improve the quality of her cleaning services and that she had been verbally warned "on many occasions". The employer says that Ms. Potvin was also warned "several times" and that the day before she was fired, she was asked by the afternoon manager to stay and help clean the rooms as several were left dirty. When she refused, the manager cleaned the rooms herself as the rooms were booked for that night. Ms. Close was also asked not to leave the motel on June 4th since rooms were still dirty but she refused and the day manager cleaned the rooms herself.

ANALYSIS

In cases of termination, the onus is on the employer to show just cause and I find on the evidence before me that this onus has not been discharged. The employer has not provided evidence of warnings (such as dates and nature of the deficiency discussed) to the workers advising them that their work was substandard and their employment was in jeopardy. They cannot produce written records in support of the contention that these workers had been warned that their work was substandard. The employees deny having been warned of performance problems and the possibility of termination. Although the Snuggle Inn is a small employer and care must be taken in imposing unreasonable standards more befitting a large employer with a human resources department, they have not discharged their onus. Without more evidence, I accept the evidence of the workers and thus I am not satisfied, on the evidence before me, that they were aware of deficiencies in their work or that their employment was in jeopardy. The employer says that both employees were advised, the day before their respective terminations, that they should stay to correct problems in the rooms, but even if I accept that this action by the employer constitutes a “warning”, it is insufficient to establish just cause. Thus, I agree that they were not terminated for just cause and under section 63 of the Act are entitled to payment in lieu of notice.

ORDER

Pursuant to section 115 of the Act, I confirm Determination #004501.

Lorna A. Pawluk
Adjudicator
Employment Standards Tribunal

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