

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 -

Matthew Soltesz

("Soltesz")

- of a Determination issued by -

The Director Of Employment Standards

(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE NO.: 96/141

DATE OF DECISION: APRIL 4, 1996

DECISION

APPEARANCES

The appellant		Matthew Soltesz
Janet Trimble	For	The Witch of Endor Beer and Wine Store
Jayne Streifel		
May Chamberlain		
Marc Hale	For	The Director

OVERVIEW

The appeal is by Matthew Soltesz ("Soltesz") pursuant to Section 112 of the *Employment Standards Act* ("the *Act*") against Determination #000946 of the Director of Employment Standards, a decision dated February 1, 1996. That Determination was issued as a result of a complaint by Soltesz, a former employee of Solihull Lodges Limited and Bluegum Investments Limited, companies which own and operate the Beer and Wine Store of the Witch of Endor Neighbourhood Pub ("Witch of Endor"). Soltesz claims that the Determination is in error, that he was in fact wrongfully dismissed and is entitled to severance pay.

FACTS

Matthew Soltesz was employed as Stocker/Cashier by Witch of Endor in its beer and wine store from April 15, 1993 to July 21, 1995 when he was terminated.

Employees of the store were advised of a need to make changes in the way they went about their work, through a notice dated April 30, 1995. Employees were told to be consistent with their cash, to make sure that they left a float of \$200 and to make sure that they entered correct product codes. They were at the same time told to dust and to stock shelves when not busy with sales.

Soltesz was given a written warning on or about May 8, 1995. The employer complained of his "attitude" and of "shelves not properly stocked". (I quote from the warning.) He was told "your cash is not very accurate again", advised of problems with "voids" and the float, and told that "it is your responsibility to make sure your cash is accurate". The warning ends with the comment, "If you have a problem with anything you are told to do then call (the writer), do not take it out on the other staff."

Soltesz was suspended for a week on June 19, 1995. Witch of Endor's reasons, outlined in a letter dated that day, were his breaking of company rules, his taking a coffee break while the store was busy, and his giving of a cheque found in the store to a stranger without asking for identification, a person that was not the owner of the cheque as it turned out. Soltesz was also given a letter by the owners of Witch of Endor, dated June 20, 1995, which said that Witch of Endor would not tolerate, among other things, attitude problems and failing to abide by company rules. The letter says, and I quote from it, "This is your last and final warning."

May Chamberlain was called as a witness by Witch of Endor. She was manager of the store at the time of Soltesz's employment and termination. She spoke of complaints by other employees of Soltesz's attitude, in particular a tendency to "get mad" and "be rude" to other employees. She testified that Soltesz, despite being warned otherwise, failed repeatedly, to perform duties expected of him as Stocker/Cashier, failed to balance the cash in his till, and broke a rule that no employee would purchase liquor through their own till.

Jayne Streifel was also called as a witness by Witch of Endor. She was an employee of the store at the time of Soltesz's employment and termination. She spoke of Soltesz's becoming agitated and very defensive in the last two to three months of his employment. She testified that he raised his voice a number of times, that while he tried hard, he was not pulling his weight. She testified that she had seen his final time sheet and that he had written foul language all over the time sheet.

Soltesz's employment was terminated on July 21, 1995 after an incident involving the manager of the Witch of Endor pub. On being refused access to a washroom, reserved for pub staff, Matthew is said to have been loudly abusive to the pub manager. That outburst led to his termination.

Soltesz claimed wrongful dismissal and filed for severance pay on November 28, 1995. That led to Determination #000956, the investigating officer finding, and I quote from the Determination, "The employer documented and relied on progressive discipline in responding to the complainant's inappropriate behaviour over a 2 month period. The Pub Manager's statements, considering, in part, she was not his manager, appear consistent with other previously documented observations of the complainant's behaviour." The officer went on to find, "The employer had 'just cause' to terminate the complainant's employment without notice based on the balance of probabilities."

ISSUE TO BE DECIDED

The issue is, Was Soltesz dismissed for just cause? Depending on the answer to that, there may be a need to calculate severance pay.

ANALYSIS

The evidence before me is that Witch of Endor brought in new management and policies with a view to making improvements to the way in which the store was run. There was a change of standards, what once might have been acceptable, or at least went unnoticed, was no longer acceptable and employees were clearly advised of that. I view the new policies as being reasonable and I am satisfied that they were made known to all employees, Soltesz included.

Soltesz tried to meet the new standards but had not met them, I am satisfied of that. The evidence before me is that criticism of his work, and the instructions for improvement which were offered so that he might meet the new standards, were met with a resistance to changing, Soltesz appearing to view criticism directed at him as rather unfair and misplaced given that it seemed to him that he had been doing the job for two years. He was angry, and his anger came to be directed at his fellow employees and management, on quite a number of occasions, that is clear from the evidence. It is anger which was misplaced and out of line. There are better, more constructive ways of making one's self understood in the work world.

The incident in the pub that led to Soltesz's termination could have been handled differently by the pub manager, of that I am sure. What Soltesz is said to have said by the pub manager, is I believe not what he meant to say, and would not have said, had he not been so desperate and the pub managers response been different. Soltesz, desperate to use a washroom as he was, saw the manager's response as completely unreasonable and he became loudly angry in the pub as a result, that is the evidence. But the manager's response is consistent with pub policy, Soltesz not being pub staff, and it is not unreasonable, other washrooms were readily available. Given that, Soltesz's loud angry outburst, and the fact that the incident came as it did on the heels of warnings and suspension, and clear warning of termination, I conclude that the Determination is correct, the employer had just cause in terminating Soltesz, and as a result, is not required to pay severance pay.

On listening to the parties three other points need to be made. First, Soltesz has not been accused of theft and there is no suggestion that theft has occurred. I want to make that clear. Second, it is clear that Mr. Soltesz did try very hard to do good work, and that he was concerned with doing a good job, attributes that will serve him well in other jobs. The final point is directed to the employee and it is advice. While an employee may disagree with an employer on occasion, angry outbursts are not the only way to convince others that you are right. Rather than getting mad, look for ways of making yourself understood. You may find greater co-operation and an appreciation of the talents that you have to offer.

ORDER

I order that Determination #000956 be confirmed, as Section 115 of the *Act* provides.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal

LDC:jel