

An appeal

- by -

Westguard Security Services (1986) Inc.
("Westguard")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: James Wolfgang

FILE No.: 2000/682

DATE OF HEARING: January 19, 2001

DATE OF DECISION: February 13, 2001

DECISION

APPEARANCES:

Robert S. Vaughn on behalf of Westguard Security Services (1986) Inc.

Janice McNary for the Director

The complainant did not attend the hearing.

OVERVIEW

The Determination found Westguard Security Services (1986) Inc. (“Westguard”) had violated Section 25 of the Employment Standards Act (the “Act”) and ordered them to pay George Tomasky (“Tomasky”) \$174.69. Westguard have requested the Determination be set aside as they owe no money to Tomasky for maintaining his own uniforms. If it is found they do owe money to Tomasky for washing and ironing his uniform the amount awarded by the delegate is “grievously overstated”. The Determination based the amount owing Tomasky to be on “full load” calculations for the washing machine and the dryer and it should have been calculated on only a portion of the costs. Westguard does not feel it should be required to pay for washing other clothes in the same load with the uniform.

ISSUE

Does Westguard owe Tomasky any money for maintaining his uniform while employed by them? If so is the amount determined by the delegate correct, and if not, what should the correct amount be?

ARGUMENT

George Tomasky was employed as a security guard for Westguard from June 1997 until July 2000. With little exception, Tomasky was employed at one location, Woodgrove Mall, for the two-year period.

Westguard operates a security company providing security staff to a number of companies. They currently employ about 50 people and have a turnover of 30 to 40 per year. Before being hired each employee is interviewed, given their rate of pay, provided with their job description and informed they are required to wear a uniform, which is supplied at the time of hire. The employees are given two pair of pants and two shirts plus a tie and outerwear as required.

Westguard denies they have ever instructed any employees to maintain their own uniforms. On the contrary, Westguard claims each employee is advised at the time of hire that they can return the uniforms for cleaning, or any other reason, as often as they wish and can take additional pieces if needed. They maintain approximately 200 pieces of uniforms in stock. No records are kept of the number of times an employee returns a uniform however, if additional items are taken, that is recorded.

Westguard claims the employees all come to the office where the uniforms are kept for their pay cheques every two weeks and it would be easy for them to exchange their uniforms at that time. They gave no explanation as to why more employees did not take advantage of this opportunity.

Westguard admits no arrangement had been made with the employees for a cleaning allowance in accordance with Section 25 (2) of the *Act*.

The delegate indicated Westguard claimed Tomasky had exchanged 30 to 40 pieces over the two-year period he was employed. Westguard does not recall providing that information to the delegate.

Tomasky did not attend the hearing however, in a written submission to the Tribunal dated 20 October 2000, Tomasky denies he was ever informed he could return his uniform for cleaning. He was advised the uniform could be exchanged if it were damaged or no longer fit. He claims he exchanged two pair of pants and two shirts over the time he was employed. He was also given new shirts in April of 2000 when Westguard changed the style, colour and logo on the shirts.

Tomasky claims he washed, dried and ironed the shirts, pants, ties and jackets at home each week for three weeks and then took them to the Laundromat once a month. He claims the other security staff also maintained their own uniforms at home. He felt the staff would not clean their uniforms if they were aware Westguard would do it for them.

The delegate did not interview any other employees of Westguard to determine the practice within the company or to find what they had been told at the time of hire.

The delegate arrived at the amount to be paid to Tomasky by using Natural Resources Canada data on the amount of energy used by the type of washer and dryer owned by Tomasky plus the amount of time taken to wash and dry the uniforms. This amount, \$1.72 per week, was multiplied by the number of weeks in the two-year period prior to the complaint, less vacation time.

In their submission to the Tribunal dated September 28, 2000 Westguard raised an issue of bias by the delegate. Westguard claimed the delegated had “predetermined that Westguard Security Services (1986) Inc. had contravened Section 25 of the *Act*.....” Westguard claim

the delegate repeatedly accused the company of being in violation of Section 25 without hearing their side of the story.

According to Westguard, the company was never shown the Tomasky's complaint by the delegate. They were told by the delegate the initial claim by Tomasky to the Branch was for dry cleaning and was "ridiculous in the amount Mr. Tomasky was demanding in repayment." Upon being advised of that fact by the delegate, Tomasky revised his claim and said he washed the uniforms in the washing machine at home.

Westguard submitted BC EST#D563/97, Lyle Pigeon in support of their position. The delegate made reference to BC EST#419/97, Glen Lake Inn in support their case.

THE FACTS AND ANALYSIS

The question before the Tribunal is does Westguard owe any money to Tomasky for maintaining his own uniform and, if so, what should that amount be?

Section 25 of the *Act* states:

25 (1) An employer who requires an employee to wear special clothing must, without charge to the employee,

(a) provide the special clothing, and

(b) clean and maintain it in a good state of repair, unless the employee is bound by an agreement made under subsection (2).

(2) If an employer and the majority of the affected employees at a workplace agree that the employees will clean their own special clothing and maintain it in a good state of repair,

(a) the agreement binds all employees at that workplace who are required to wear special clothing,

(b) the employer must reimburse, in accordance with the agreement, each employee bound by the agreement for the cost of cleaning and maintaining the special clothing, and

(c) the employer must retain for 5 years records of the agreement and the amounts reimbursed.

(3) The following are deemed to be wages owing and this Act applies to their recovery:

(a) *money received or deducted by an employer from an employee for providing, cleaning or maintaining special clothing;*

(b) *money an employer fails to reimburse under subsection (2).*

Westguard admit there was no arrangement under Section 25(2) of the *Act* to have the employees reimbursed for cleaning and maintaining their uniforms. They claim the employees were aware they could exchange their uniforms at any time.

If there is no agreement between the employees and the employer under Section 25(2) then Section 25(1) applies. There was no new evidence presented to indicate the employees were specifically informed at the time of hire the company would be responsible for cleaning and maintaining the uniforms. While I accept Westguard's statement they would exchange any uniform returned I do not believe returning a uniform specifically for cleaning was made clear to the employees. I find the delegate was correct in determining Section 25(1) had been contravened.

Westguard submitted BC EST #D563/97, Lyle Pigeon, in support of their position. In that decision, the delegate had denied a claim by Pigeon for money to cover the cost of cleaning a shirt required by the employer. The reason cited in the decision was the fact Pigeon had no receipts for the cost of cleaning. The adjudicator stated: "I agree with the Delegate; to claim a charge, some proof of payment is necessary. I also agree with the Company that putting his work shirt in with his regular laundry was not a cost that the company was required to support."

I disagree with the adjudicator on that point. The issue that gave rise to the claim was the fact the employer appeared to be in violation of Section 25(1) not where or how Pigeon cleaned the shirt. Section 25(1) of the *Act* requires an employer to supply and maintain special clothing, where required by the employer. To deny a reasonable claim after a violation of the *Act* is to allow the employer to contravene the *Act* without penalty.

The delegate referenced BC EST #419/97, Glen Lake Inn, in which the adjudicator found that \$1.55 per shift was an adequate expense as this was the commercial cost of cleaning a shirt. There is no reference to receipts in that case and the method of calculating the cost suggests none existed. I am inclined to support the decision in the above case over that submitted by Westguard.

Having found Section 25(1) of the *Act* had been contravened, all that remains is to determine if the amount awarded in the Determination is correct.

The delegate went to some considerable length to establish a reasonable amount to replicate the cost of washing, drying and ironing the uniform worn by Tomasky. In a submission to the Tribunal dated October 31, 2000 the delegate stated: "To expect an employee to have receipts for doing wash (sic) at home is not reasonable. However, that does not mean that a

cost was not incurred for doing laundry, it only means that the expense is implicit and not explicit.” The costing was based on the provision the uniform would be washed as a separate load.

Westguard disagrees with that position and feels the uniform would normally be washed along with other personal items and the uniform would only constitute a portion of the amount in the Determination.

I believe the reverse to be the case. Tomasky is entitled to compensation for maintaining his uniform at home. If other personal items are added to that load it does not change the obligation. There has been a violation of Section 25 (1) of the *Act* and a Determination has been issued. The appellant has an obligation to prove the Determination wrong. For me to take a discretionary position different than the delegate requires some evidence proving the delegate erred in law or in fact. No such evidence was presented.

If the uniforms worn by Tomasky had been returned to the company for cleaning each week I am sure the cost incurred in having them cleaned would exceed the amount established by the delegate.

For the reasons outlined above I confirm the Determination.

I will now address the question of bias claimed by Westguard. Westguard feels the matter had been predetermined before they had an opportunity to present their story. They also rely on the claim the delegate never gave them a copy of the original complaint. Westguard also felt there was bias in the Nanaimo office when he had difficulty in getting a copy of the complaint. Westguard argued the *Act* is for the benefit of employers and employees and the staff was not neutral in their approach. I agree with the point the *Act* is to promote the fair treatment of employees and employers. If Westguard wishes to pursue that issue it should be addressed to the Branch and not the Tribunal. On the evidence, I believe a violation of Section 25 (1) had occurred and the claim of bias, whether proven or not, would not have changed the outcome.

A claim of bias is a serious matter and bears investigation. According to Westguard, the delegate stated the company was in violation of Section 25 before she had conducted an investigation. The delegate strongly disagrees with that position and feels a full and objective assessment of the facts was made before issuing the Determination. The delegate also claims an attempt to mediate the matter points to a lack of predetermination.

In reading the Determination and the material supplied by the delegate to the Tribunal plus the evidence at the hearing I do not believe Westguard has made a case of bias. On the contrary, I believe the delegate was careful to prepare a Determination that was reasonable and defensible.

ORDER

In accordance with Section 115 of the *Act* I confirm the Determination by the Branch dated September 15, 2000. Additional interest is to be calculated in accordance with Section 88 of the *Act*.

James Wolfgang _____

James Wolfgang
Adjudicator
Employment Standards Tribunal