

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 -

Sutton Hotels Ltd. operating Highlander Motor Inn, Travelodge
("Sutton")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Carol L. Roberts

FILE NO.: 96/123

DATE OF DECISION: May 14, 1996

DECISION

OVERVIEW

This is an appeal by Sutton Hotels Ltd. (“Sutton”), pursuant to Section 112 of the Employment Standards *Act* (“*Act*”), against a Determination of the Director of Employment Standards (“the Director”) issued on February 6, 1996 (Determination #001042) where in the Director found that the employer had contravened Section 63 of the Employment Standards *Act*, and ordered compensation for length of service pay in the amount of \$797.80.

FACTS

Manjeet Sidhu (“Sidhu”) was employed with the Highland Motor Inn as front desk clerk from May 1992 to June 1995. In June, the property was sold to Sutton, and Sidhu was kept on in the capacity of front desk clerk until her dismissal on November 15, 1995.

The Director found that, although there was some evidence of previous disciplinary action taken by the employer (specifically a warning letter to Sidhu dated September 15, 1995), insufficient evidence of cause for dismissal on November 15, 1995.

The Director found that, progressive discipline had not been applied, and therefore, just cause had not been established, and compensation for length of service pay was awarded.

ISSUE TO BE DECIDED

The issue on appeal was whether Sidhu was appropriately dismissed for cause.

ANALYSIS

This appeal was by way of a written submission by Ms. Michalski. She contends the Director erred in her determination in finding that Sidhu was improperly terminated. I have reviewed the letter from Michalski upon filing the appeal, the documents submitted to the Director by Sutton during the investigation of the complaint, the determination of the Director, and the letter of appeal in arriving at my decision.

On the basis of the evidence presented, I confirm the decision of the Director.

Section 63 of the *Act* provides that the Employer is liable to compensate the Employee for an amount equal to two weeks wages as compensation for length of service unless, among other things, the Employee is dismissed for just cause.

The Employer contends that she had sufficient grounds on which to terminate Sidhu's employment, including one incident of poor customer relations, and one incident of failing to monitor customer phone charges, both of which were the subject of a warning letter dated September 15. Michalski also contends that Sidhu was verbally warned on a 'number of' occasions that further occurrences of improper performance on the job would put her employment 'in question'.

Michalski submitted no additional evidence on appeal, but noted that there were further customer complaints after the warnings were given, and that a computer instructor 'diagnosed him as being computer illiterate', which she contends substantiate the dismissal.

The onus is on the Employer at first instance to establish just cause. Just cause includes criminal acts, gross incompetence or a significant breach of workplace policies. It also includes minor infractions of workplace rules, or unsatisfactory conduct where the conduct is repeated despite clear warnings to the contrary.

On the evidence presented, I find that Sidhu satisfactorily performed her duties for just over three years. The evidence is that her first warning letter was written shortly after the new management was in place. The evidence disclosed that Sidhu was apparently dismissed, at least in part, due to her inability to cope with the computer system. There was however, no previous warnings that her job would be in jeopardy if she was unable to learn the system.

The evidence from the previous owner of the Inn suggest that Sidhu was a pleasant, hardworking and reliable employee. There is also evidence that she satisfactory completed a 20 hour keyboarding computer course. In addition, Sidhu's evidence contradicts the allegations of early morning telephone calls to the Director of Operations which were used to justify the dismissal. No evidence from the Director of Operations was submitted with the appeal.

There is no evidence to suggest that Sidhu was aware that her lack of computer skills would place her job in jeopardy, although this is one of the grounds cited by the employer as cause for dismissal. In addition, the other grounds cited, being her poor customer relations, seems not to be borne out by the letter of recommendation from her past employer, and her over three years of continuous service.

I am not satisfied that satisfactory disciplinary measures were instituted, nor that Sidhu failed to respond to them.

I am unable to find that the Appellant has discharged the burden of establishing that the Director's decision was in error, and I deny the appeal.

ORDER

I Order, pursuant to Section 115 of the *Act*, that Determination #001042 be confirmed.

“Carol L. Roberts”

Carol L. Roberts
Adjudicator
Employment Standards Tribunal

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