



An appeal

- by -

Charl Pryce Operating as Ardinbhe Kennels  
("the Employer")

- 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:** Jean Greatbatch

**FILE No.:** 2000/690

**DATE OF HEARING:** January 15, 2001

**DATE OF DECISION:** February 13, 2001

## DECISION

### APPEARANCES:

Charl Pryce

Frances Pryce, Charl Pryce's mother ("Pryce's mother")

### OVERVIEW

This is appeal by Charl Pryce ("Pryce") under Section 112 of the *Employment Standards Act* of a determination of the Director of Employment Standards issued on September 13, 2000.

Charl Price operates a boarding kennel business. She employed Cari Block ("Block") as a general assistant from July 6, 1999 to December 31, 1999 at the rate of \$10.00 per hour. Block worked a forty-hour week assisting with the care of the dogs. Pryce dismissed Block verbally on January 11, 2000. The reason for the dismissal is stated in a letter dated January 8, 2000, which was given to Block on January 11. The letter states, "After having been issued 2 warnings about unsatisfactory work attendance, we understand that you are not returning to work". Pryce told the Delegate of the Director of Employment Standards ("the Delegate") that she had dismissed Block because she considered that Block had abandoned her position and quit her employment. Block had been scheduled to work on January 4, but had called Pryce the evening of January 3 to report that she was ill and would not be reporting for work. When she returned to work on January 11 Block was told that she had been dismissed. A Record of Employment was issued to her indicating dismissal as the reason for the termination of employment.

The Delegate found that having informed her employer that she was sick; Block had fulfilled her obligation as an employee. The Delegate went on to state that if an employer wishes to terminate an employee on sick leave, she must give working notice to that employee, or pay compensation for length of service. He found no evidence to support that Block had intended to quit. He noted that the Record of Employment completed by Pryce gave "dismissal" as the reason for Block's termination and concluded that Pryce had intended to dismiss Block. The Delegate ordered Pryce to pay \$436.14 to Block as compensation for length of service.

### ISSUES

Pryce appealed the determination on the following grounds:

1. New evidence from the Workers' Compensation Board ("WCB"), unavailable to the Delegate during his investigation, which contains evidence that Block was dishonest.
2. Just cause for the dismissal of Block due to excessive absenteeism and dishonesty.
3. Errors in findings of facts

## ARGUMENT

Pryce claims that:

1. A letter from the Workers' Compensation Board entered as new evidence prior to the hearing shows that Block was not suffering from the flu, as she had stated, but rather was off work due to a sore thumb. Pryce argued that this was proof of dishonesty and just cause for dismissal.
2. She had verbally warned Block on two occasions that her excessive absenteeism would have to improve or she would be dismissed. Pryce pointed to a letter written by Block on February 8, 2000 to the Employment Standards Branch, which referred to one of the warnings. Pryce argued that she had met the test for just cause for dismissal due to excessive absenteeism and that the new information from the WCB further supported that she had just cause.
3. The determination contained factual errors, which have an impact on the findings.

## THE FACTS AND ANALYSIS

Both Pryce and her mother gave sworn testimony. Block did not appear at the hearing.

### **New Evidence from the Workers' Compensation Board**

A letter dated January 3, 2001 from Sandy Morse, Case Manager at the WCB to Pryce was entered as evidence prior to the hearing. In that letter Ms. Morse gave a history of a claim filed by Block due to an injury sustained at work while shovelling bark mulch on October 28, 1999. Her claim for left thumb sprain, filed on October 31, 1999, was approved on November 16 and she was paid wage loss benefits from October 29 to November 4, 1999. On January 6, 2000 Block sought medical attention for left thumb pain for two days and was diagnosed with tendonitis. The attending physician noted that she was temporarily disabled from work and would be able to return as of January 10. On January 11 a WCB rep contacted Block who confirmed that she was off work January 6, 7 and 8, 2000. Block told the rep that her thumb had become sore again on January 1, that she had gone to see her doctor on January 6 and that she would be returning to work "that day".

The letter from Ms Morse contains evidence on her discussions with Pryce. She stated that she had called Pryce on January 12, 2000 to discuss Block's request to reopen her wage loss claim. She noted that Pryce told her that Block had not reported any ongoing difficulties with her thumb following her return to work in November. Morse noted that: "*You stated that at the time the worker called in with the flu on December (sic) 4, 1999(sic), she stated that her thumb was bothering her.*" Pryce's evidence was that Morse had in fact spoken with her mother. Pryce's mother testified that she could not recall Block mentioning a sore thumb when she called in sick on January 3<sup>rd</sup>. Nor did she recall telling Morse that Block had done so.

Ms Morse reported her telephone conversation with Block on January 13, 2000, during which Block told her that: "following her return to work she had no problems with her thumb until

January 1. She stated that she was not working that day, but felt a slight pain in her left thumb...at the time she had the flu and she waited until the pain had not gone away and then sought medical attention.”

The letter from the WCB does not contain any evidence that Block was dishonest. Rather, it contains evidence that Block developed pain in her thumb while off work with the flu and that she reported this to her employer.

### **Just cause for dismissal**

Pryce’s evidence at the hearing was that she had fired Block for three reasons: chronic absenteeism, dishonesty and tardiness. This evidence differs from the reason for dismissal given in the letter written to Block dated January 8, 2000: “we understand that you are not returning to work” i.e. abandonment.

Pryce stated in her evidence that she had verbally warned Block on two occasions about her absenteeism from work. She stated that one of these discussions took place some time in November and the second on December 18, and that Block referred to the latter conversation in her letter of January 18 to the Delegate, which is in evidence. In that letter Block stated: “On November 30/99 I had a Laparoscopy at Surrey Memorial Hospital, and had to take two weeks from work. I returned to work in mid December 1999. working slowly, approx. 2-4 hours a day, or more when possible. On December 18<sup>th</sup> Ms. Pryce told me I had to “start working full 8 hours a day, or start looking for new work.” On one of those days Ms. Pryce’s mother told me that Ms. Pryce was sending me home early, because she could not afford to pay me.”

Pryce did not recall what she said to Block in either conversation, nor did she make notes of the dates or content. Pryce stated that her mother witnessed one of the discussions. Pryce’s mother testified that she recalled being present at one discussion about absenteeism between Pryce and Block. She did not recall when or where the discussions took place. She recollected that Pryce told Block: “I hope that this (absenteeism) will improve, I need your help here because of my health.” Pryce denied sending Block home early from work on any occasion due to an inability to pay her wages.

Pryce testified that Block was dishonest because she had called in sick with the flu on January 3<sup>rd</sup>, when in fact she had a sore thumb. She stated that she became aware of this during the first week of January when the WCB contacted her following their receipt of the application for reopening wage loss benefits.

Pryce’s mother testified that she had received a telephone call from Block at about 9:25 p.m. on January 3, informing her that she was ill and would not be in the following day. Frances Pryce stated that she told Block “to return when she was better.” Pryce’s mother testified that she was called again on January 6, 7 or 8 by Block to ask if her December paycheque could be left for pickup in Pryce’s mailbox. She left the cheque in the mailbox on the morning of January 9. Both Pryce and her mother testified that Pryce decided to dismiss Block later that day and wrote the letter dated January 8. Block did not receive the letter until she returned to work on January 11, and was told that she had been dismissed.

Block's written submission contains a statement that she called Pryce's mother on January 6 to inform her that she would be back at work the following Tuesday. Block states that by her telephone calls to Pryce she clearly intended to return to work on January 11 and did not abandon her employment.

In order for me to overturn the determination, the appellant, Pryce must prove that the Delegate erred when he decided that Block had not abandoned her position. She has failed to do so. There is no evidence that Block intended to quit her employment. The evidence from Pryce regarding her reason for dismissing Block is contradictory. The Record of Employment indicates dismissal, as did her verbal evidence. Pryce did not provide evidence that there was just cause for her to dismiss Block. There is no evidence that Block had been dishonest. Although there is evidence that Pryce warned Block on at least one occasion that her absenteeism was a problem, the evidence is contradictory and insufficient to warrant overturning the determination.

### **Errors in findings of fact**

None of the seven "errors in finding of fact" appended to the appeal are errors, with the exception of a typographical error in the determination, which gave the date of Block's return to work as January 1 instead of January 11. The "errors" are in fact, a list of disagreements that Pryce has with the analysis of facts and the decision.

### **ORDER**

Pursuant to section 115 of the *Act*, I confirm the determination of September 13, 2000.

**Jean Greatbatch**

**Jean Greatbatch**

**Adjudicator**

**Employment Standards Tribunal**

JG/bls