

An appeal

- by -

Daniel Vokey, operating as Patisserie Daniel

- 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:** John M. Orr

**FILE No.:** 2001/674

**DATE OF HEARING:** March 22, 2002

**DATE OF DECISION:** March 26, 2002

## DECISION

### APPEARANCES:

Daniel Vokey	On his own behalf
Melinda Mann	On her own behalf

### OVERVIEW

This is an appeal by Daniel Vokey operating as Patisserie Daniel (“Vokey”) pursuant to section 112 of the *Employment Standards Act* (“the Act”) from a determination dated August 30, 2001 by the Director of Employment Standards (“the Director”).

Melinda Mann (“Mann”) was employed by Vokey at his patisserie in Victoria for over three years. She was an excellent employee and on April 9<sup>th</sup> 2001 she was promoted to a management position. On April 19<sup>th</sup> 2001 Vokey sent Mann home early for poor performance and dismissed her the next day.

The Director found that there was not “just cause” for the dismissal and that accordingly Mann was entitled to compensation for length of service. Vokey appeals that decision on the grounds that Mann’s behaviour subsequent to being sent home was incompatible with the continued working relationship and that therefore there was just cause for dismissal.

### ANALYSIS

There was little dispute over the facts in this case. Mann agrees that on the morning of April 19<sup>th</sup> she was not performing up to her usual 110%. She had been out late the night before and had only slept for a couple of hours before coming in to work. There was some question about whether she was “hung-over” but it is not necessary to decide that point. I accept that Vokey had reasonable grounds to send Mann home. The *Act* does not restrict or regulate an employer’s right to discipline an employee for poor performance and the *Act* does not require or even refer to the notion of “progressive discipline”. The delegate does make some reference to this term but the error does not affect the outcome of the determination or this adjudication.

Mann was very upset about being sent home and as she was leaving made an unfortunate comment to the two bakers who were working at the rear of the business. She said “He can take this manager job and stick it up his ass”. Unfortunately for Ms. Mann the comment was repeated to Vokey by the bakers. She had not intended it for his ears and says that she was only “venting” as she was upset about being sent home. Vokey took the comment very personally and decided that the employment relationship was irreparably harmed.

While the comment, under other circumstances, might have constituted a resignation it was not argued that Mann ever intended the comment to be an indication that she was quitting her job.

There are occasions where emotional outbursts can result in dismissal but those cases have involved a direct face to face confrontation of the employer by the employee, have involved threats, profanities, insults and often a physical component: *Re: Justason*, BCEST #D109/97; *Re: Bodycraft Collision Ltd*, BCEST #D112/01; *Re: Mills*, BCEST #D028/97. In this case the emotional outburst was made by a normally excellent employee. It was not made in any confrontation with the employer and was not intended for his ears. It was in fact a fairly normal human reaction to her disappointment with her poor performance and to the humiliation of being sent home.

The Director's delegate made a careful and reasoned determination. He applied the proper provisions of the *Act* and applied the jurisprudence from the Tribunal in an appropriate manner. The delegate decided that this singular event was not sufficient for summary termination. I agree.

The onus on an appeal is on the appellant, in this case Mr. Vokey, to persuade me that the determination was wrong in its findings of fact or the application of the *Act* or jurisprudence. I am not satisfied that Mr. Vokey has met that onus. I conclude that the determination should be confirmed.

## **ORDER**

Pursuant to section 115 of the Act I order that the determination herein is confirmed.

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**John M. Orr**  
**Adjudicator**  
**Employment Standards Tribunal**