

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 -

Victoria Building Maintenance Ltd.
("VBM")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: C. L. Roberts

FILE NO.: 96/098

DATE OF HEARING: May 10, 1996

DATE OF DECISION: May 21, 1996

DECISION

APPEARANCES:

H. S. Hundal	For the Appellant
Dorothy Bright	For the Director of Employment Standards
Betty Boudreau	Representing herself

OVERVIEW

This is an appeal by Victoria Building Maintenance Ltd. ("VBM"), pursuant to Section 112 of the Employment Standards Act ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued on January 9, 1996 (Determination #000631) wherein the Director found that the employer had contravened the Employment Standards Act in terminating the employment of the employee and failing to pay compensation for length of service. The Director determined that VBM owed \$487.50 to Betty Boudreau ("Boudreau").

ISSUE TO BE DECIDED

The issue on appeal was whether compensation was owing. VBM contended that the Director's determination that money was owing was wrong as the employee was properly moved to another work location, not terminated from her employment.

FACTS

Boudreau was a part time employee with VBM since November 1, 1993, working a four hour shift, five days per week. On July 14, 1995 Hundal went on holidays, and gave Boudreau an eight hour shift until his return. The parties agreed that Boudreau would return to her 4 hour per day schedule upon Hundal's return.

Upon returning from holidays, Hundal received letters from other tenants and the manager of the building regarding the high quality of Boudreau's work. Hundal felt these letters had been sought by Boudreau in an effort to retain the 8 hour shift. On September 29, Hundal received another letter from the building manager, and moved Boudreau to a night shift in another building as of October 2. Boudreau complained to the Employment Standards Branch.

The Director found that Boudreau's shift was changed from a day shift to a night shift, and her work location was changed to another building. As this constituted a substantial change to the condition of her employment, the Director determined that Boudreau's employment had been terminated without notice pursuant to Section 66 of the Act, and ordered payment of two weeks wages.

ARGUMENT

At the hearing, Hundal agreed that he had changed Boudreau's conditions of employment. He contended however, that the employee had to move, or face dismissal due to the trouble she had caused him and his other workers.

Hundal claimed that he warned Boudreau about her work on March 22, 1995, and that the conversation he had with Boudreau about the 'trouble letters' on September 22 constituted sufficient warning. He contended that he had just cause for dismissal after further letters were received on September 29.

Boudreau denied that any conversation about the letters occurred until September 29, at which time she was advised that her conditions of employment were being changed. She contends that she did not solicit the letters from the tenants in the building regarding the cleanliness of the building, and that the quality of her work has always been good.

ANALYSIS

After considering the submissions of VBM and the Director's delegate, I confirm the decision of the Director.

No new evidence was presented. Hundal confirmed that he had moved Boudreau as he felt he was losing control of his business, and being undermined by Boudreau through the letters from the tenants of the building.

Hundal remains of the opinion that Boudreau solicited the letters in support of a continued 8 hour shift. No evidence was presented at the hearing to substantiate that opinion in the face of the Director's determination that such was not the case.

However, even if there was evidence to support this contention, Hundal provided no evidence of progressive discipline, or warnings to Boudreau regarding her behaviour. His evidence was that he showed Boudreau the letters when he went to her house one evening.

I am unable to find that this constitutes a proper warning regarding dissatisfaction with her job performance. Even if I am wrong in this finding, there was no attempt at progressive discipline in any event.

The burden of proof in an appeal is on the Appellant. There was no new evidence presented, and I am unable to find that VBM has discharged the burden of establishing that the Director's decision was in error. I deny the appeal.

ORDER

I Order, pursuant to Section 115 of the Act, that Determination #000631 be confirmed.

Carol Roberts
Adjudicator
Employment Standards Tribunal

CR:jel