

**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 -

Travis Justason  
("Justason")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 96/609

**DATE OF HEARING:** February 25, 1997

**DATE OF DECISION:** March 11, 1997

**DECISION**

**APPEARANCES**

Travis Justason                      on his own behalf  
Kerry N. Grieve                      on behalf of Tylor Products Inc.  
Jim Walton                              on behalf of the Director of Employment Standards

**OVERVIEW**

This is an appeal by Travis Justason (“Justason”), under Section 112 of the *Employment Standards Act* (the “Act”), against Determination No. CDET 004699 which was issued by a delegate of the Employment Standards on November 15, 1996. The Determination found no contravention of the *Act* by Tylor Products Inc. because there was “just cause” to terminate Justason’s employment and, therefore, compensation for length of service was not required under Section 63 of the *Act*. Justason’s appeal seeks “severance pay” and “...most importantly, to clear my name” on the ground that he was wrongfully dismissed due to his ...“employer’s ill temper.”

A hearing was held on February 25, 1997 at which time evidence was given under oath by Travis Justason, Kenneth Justason, Tom Thomas, Margaret Thomas, Duane Sheppard and Tom(Barney) Bancroft. Duane Sheppard and Tom Bancroft were excluded from the hearing until they gave evidence.

**ISSUE TO BE DECIDED**

Was there just cause for Tylor Products Inc. to terminate the employment of Travis Justason on September 17, 1996?

**FACTS**

Justason was employed as a sign-maker by Tylor Products Inc. from January 5, 1994 to September 17, 1996. Justason supervised the only two other employees employed by Tylor.

Thomas R. Thomas (“Thomas”) is the president and principal shareholder of Tylor Products Inc.

In the Reason Schedule attached to the Determination, the Director’s delegate sets out, at length, the facts and information which he considered to be relevant in reaching his

conclusion that "...based upon all information received, the employer did have just cause to terminate the complainant and that compensation for length of service is not required."

There is no dispute that the events which gave rise to Justason's dismissal occurred on September 17, 1996 and arose out of a conversation in which Justason and Thomas discussed the status of payments made to the Medical Services Plan ("MSP") by Tylor on behalf of Justason. There is also no dispute that Justason believed that premium payments to the MSP were past due and, as a result, he was concerned that his insurance coverage under the MSP may be cancelled. He discussed this concern with his co-workers (Sheppard and Bancroft) during the lunch period.

The arrangement between Tylor and Justason was that the MSP premium billing notice would be sent to Justason's home address, he would give the billing notice to Tylor and Tylor would remit the required premium payment to the MSP. Thomas' wife, Margaret Thomas, performed bookkeeping duties for Tylor including making payments to the MSP during Justason's employment.

Justason's concerns were based, in part, on the following warning statement which appeared on the February, 1996 overdue premium billing notice:

\*\*\*IMPORTANT: IF THE MINIMUM PAYMENT IS NOT RECEIVED BY THE DUE DATE, YOUR BENEFITS WILL CANCEL DEC. 31, 1995\*\*\*

The July, 1996 and August, 1996 premium billing notices each contained the following statement:

\*\*\*IMPORTANT: Your account is in arrears. Please remit the minimum payment requested.

Each of the premium billing notices contained a pre-printed statement on the bottom of the page:

"Please allow 8 days for payment to reach us if paying by mail or at a bank. Payments received after the bill date are not included in this bill."

Margaret Thomas gave evidence, which was not refuted by Justason, that she had explained MSP's "billing problems" to Justason some months prior to September 17, 1996. On that occasion, Mrs. Thomas testified, she had explained that she made payments to MSP on the 15th of each month but, due to the volume of work, payments which she made were often not processed before the next premium billing notice would be issued by the MSP.

Mrs. Thomas also gave evidence about the events of September 17, 1996. She testified that her husband called her to come to the workshop where he was talking with Justason. (The Thomas home is adjacent to the Tylor workplace.) When she arrived in the shop, Justason asked her why his MSP premiums had not been paid and she told him that the premiums for August, 1996 and September, 1996 had been paid. She returned to the house to retrieve a copy of her payment records. On her return, she testified, she explained MSP's

billing/posting back-log problems to Justason. According to Mrs. Thomas, Justason appeared very agitated at this point and her husband asked her to contact MSP by telephone to get an answer to Justason's concerns. None of this evidence was refuted by Justason and his own testimony corroborates that given thus far by Mrs. Thomas.

According to Mrs. Thomas' evidence, as she dialed the telephone Justason went from the office to the paint room and yelled: "What a fucking asshole. I hat the prick." This was corroborated by Bancroft, who was working in the paintroom at the time and who saw Justason emerge from the office. After several unsuccessful attempts, Mrs. Thomas contacted an accounting clerk at MSP to confirm that premium payments had been made regularly and on time. She also asked the clerk to assure Justason that his account was in order. Mrs. Thomson testified that Justason asked the MSP clerk four questions:

- "Is my MSP paid up to date?"
- "If I went into hospital would I be treated?"
- "Will my coverage be cancelled?"
- "Will this affect my credit rating?"

It is at this juncture that there is a significant difference in the evidence given by Justason compared to that given by Thomas, Margaret Thomas, Sheppard and Bancroft. Thus, the central issue in dispute in this appeal is what was said by whom and the sequence of events following Justason's telephone conversation with the MSP accounting employee in Victoria.

Justason testified that he did not say "Yes, everything is O.K." at the end of the telephone conversation when asked by Mr. Thomas. Rather, he testified that Thomas said "You and Me are going to have it out right now" while pointing his finger at Justason's face. He also testified that Thomas told him he had a "bad attitude" in reference to him telling Thomas that he did not appreciate Thomas' mistreatment of him.

Justason also testified that he and Thomas engaged in a wide-ranging discussion for approximately 20 minutes immediately following the telephone conversation with the MSP clerk. That conversation concluded, according to Justason, when Thomas told him "Get the fuck out of here" which Justason testified he understood to mean that Thomas had dismissed ("fired") him.

Under cross-examination by Tylor's counsel, Justason acknowledged that he was not satisfied with the information given to him by the MSP clerk despite being told that payments were up to date and his coverage would not be cancelled. He also confirmed that he had discussed his concerns previously with Mrs. Thomas and she had explained to him about MSP's delays in posting premium payments made by Tylor. When asked by counsel if he said "Fucking asshole. I hate that prick", Justason testified that he was "...experiencing those emotions", that he possibly used profanities and that he "said it loud enough for Tom Bancroft to hear it and, possibly, Mrs. Thomas and Tom Thomas." The evidence given by Bancroft, Sheppard, Margaret and Tom Thomas confirms that they heard Justason's profane statement.

Tom Thomas' evidence corroborated his wife's evidence and much of Justason's evidence. However, the evidence given by Thomas concerning how his conversation with Justason came to an end differs dramatically from Justason's evidence. According to Thomas, toward the end of their conversation, Justason referred to Thomas' frequent tendency to yell at his employees, particularly Justason. In replying to this comment, Thomas testified that he gave Justason an example of how loudly he could yell to which Justason replied sarcastically: "Oh, I am scared." Sheppard testified that he heard this conversation clearly. According to Thomas, Justason then said that he did not respect him as a businessman and began swearing. Thomas testified at this point that he told Justason: "Travis, I think you should go home." As a result, Thomas testified, Justason became very angry, walked out of the office while swearing, knocked the office door off its hinges and kicked several empty cardboard boxes around the shop. Thomas then told Justason: "That's it, you're fired. This is not a lay-off. You're fired." Justason replied: "You can't fire me, I quit." Justason left the workplace.

About ten minutes later, Justason spoke to Mrs. Thomas by telephone to confirm that Thomas had dismissed him and to request his "severance pay."

Thomas gave several reasons for his decision to dismiss Justason: the irreparable damage to the employment relationship which was caused by Justason's "violent outburst"; his use of profanities; and, his display of disrespect for Thomas in front of the other two employees (Bancroft and Sheppard).

Kenneth Justason (Travis' father) gave evidence concerning three incidents involving his son and Tom Thomas (telephone conversations concerning a missing tool; conversation concerning a sign on a truck at a farm produce stall; and, drawings prepared by Travis Justason for a new grocery store). Mr. Justason tendered this evidence as examples of what he considered to be unusual reactions by Thomas to events which did not require such reactions.

In addition to the oral evidence which Tom Bancroft gave about the events of September 17, 1996 he also gave evidence concerning the written statement which he made on September 19, 1996 and an undated written statement made on or about October 7, 1996. He testified that the statement dated September 19, 1996 was written by him, without assistance. The statement signed by him on or about October 7, 1996 was written by Justason. Bancroft did not want to sign the statement when he was first asked to do so by Justason. He testified that he signed it some days later when Justason went to his house to discuss it with him. He also testified that he "...did not really agree with the statement" when he signed it, but did so because he believed it would assist Justason to receive unemployment benefits.

Duane Sheppard testified that his written statement of September 19, 1996 was accurate. It was prepared by Margaret Thomas on his behalf from oral statements made by him and transcribed by her. Sheppard also testified that the written statement dated October 7, 1996 was written by Justason; he did not want to sign it; and, he did not agree with its contents. He believed that the statement would be used by Justason to assist in his claim for unemployment benefits.

## ANALYSIS

Section 63 of the *Act* establishes a statutory liability on an employer to pay length of service compensation to an employee upon termination of employment. That statutory liability may be discharged by the employer giving appropriate notice to the employee, by providing a combination of notice and payment in lieu of notice to the employee or by paying the employee wages equivalent to the period of notice to which the employee is entitled under the *Act*.

Also, an employer may be discharged from this statutory liability by the conduct of the employee, if the employee resigns, retires or is dismissed for “just cause.”

The Tribunal has addressed the question of dismissal for “just cause” on many occasions. The following principles were set out in *Kenneth Kruger* (BCEST #D003/97) to summarize the Tribunal’s decisions concerning “just cause”:

1. The burden of proving the conduct of the employee justifies dismissal is on the employer;
2. Most employment offenses are minor instances of misconduct by the employee and not sufficient, on their own, to justify dismissal. Where the employer seeks to rely on what are in fact instances of minor misconduct, it must show:
  1. A reasonable standard of performance was established and communicated to the employee;
  2. The employee was given a sufficient period of time to meet the required standard of performance and had demonstrated they were unwilling to do so;
  3. The employee was adequately notified their employment was in jeopardy by a continuing failure to meet the standard; and
  4. The employee continued to be unwilling to meet the standard.
3. Where the dismissal is related to the inability of the employee to meet the requirements of the job, and not to any misconduct, the Tribunal will also look at the efforts made by the employer to train and instruct the employee and whether the employer has considered other options, such as transferring the employee to another available position within the capabilities of the employee.
4. In exceptional circumstances, a single act of misconduct by an employee may be sufficiently serious to justify summary dismissal without the requirement of a warning. The Tribunal has been guided by the common law on the question of whether the established facts justify such a dismissal.

In this case, the Director’s delegate found that “...based upon all information received”, the employer had just cause to dismiss Justason. As result of that finding, the Director’s delegate determined that Section 63 of the *Act* does not require Tylor to pay compensation to Justason. Justason argues that the events of September 17, 1996 which led to his dismissal were the result of an “emotional flare-up” that was out of character. . He

tendered several letters from family members and neighbours to support this view. He also argues that Tylor's payment of MSP premiums on his behalf were in arrears and that Thomas was not listening to his "legitimate questions" concerning those payments. with respect to the office door, Justason argues that he did not damage it deliberately, that it was hung on its hinges poorly and that the cost of repairing it was minimal.

Justason acknowledges, and I find that his was dismissed by Tylor on September 17, 1996.

The Director's delegate found that Justason's actions and words were sufficiently serious to give Tylor just cause to dismiss him. When I review all of the evidence and written submissions, I find that I agree with the Determination made by the Director's delegate.

Justason's actions and words amounted to a fundamental breach and repudiation of the employment relationship. He offered no rationale as to why he did not accept the explanations offered to him by both Mrs. Thomas and the MPS accounting clerk concerning the delay in posting payments to his account. He expressed no remorse nor offered any apology for his profanities.

On balance, I find it improbable that Thomas provoked an emotional reaction by Justason on September 17th. I also find that Justason's words and actions were both insolent and insubordinate to such a degree as to repudiate the employment relationship. In short, Justason's words and actions were sufficiently serious to justify his dismissal without warning.

## **ORDER**

I order, under Section 115 of the *Act*, that Determination No. CDET 004699 be confirmed.

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**