

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 -

M. Shaw Enterprises Ltd.
("Shaw")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

Adjudicator: Jerry W. Brown

File No: 96/135

Hearing Date: June 5, 1996

Date of Decision: July 18, 1996

DECISION

APPEARANCES

Michael Louis Shaw

Director of M. Shaw Enterprises

Adrian Rees

For the Director

OVERVIEW

This is an appeal brought by M. Shaw Enterprises Ltd. ("Shaw") pursuant to Section 112 of the *Employment Standards Act* (the "Act"), from Determination No. CDET 001026 issued by the Director of Employment Standards (the "Director") through its Delegate on February 5, 1996.

The Director determined that Shaw owed Tammy Williams ("Williams"), the complainant, \$219.04 as compensation for length of service, including four percent vacation pay.

Shaw's reasons for appealing were as follows:

1. There was bias on the part of the Director's Delegate; and
2. Shaw alleges Williams was terminated for just cause, thereby relieving Shaw from paying compensation for length of service.

Discussions were held at the beginning of the hearing to address the issue of bias. After canvassing the matter, Shaw agreed to drop the bias issue and deal solely with the issue of just cause. Shaw's position had been that information had not been considered by the Director's Delegate, but acknowledged that a full review of the matter by the Adjudicator, including all the "relevant" information to be provided by Shaw, would eliminate that issue and satisfy Shaw.

FACTS

Williams commenced employment with Shaw on September 16, 1994. Her last day of work was November 27, 1995.

Williams advised Shaw on November 24, 1995 that she was leaving her job in two weeks. On November 27, 1995, during the notice period, Shaw terminated Williams. Shaw paid Williams up to and including November 30, 1995 the amount of \$224.

ISSUE TO BE DECIDED

Whether Shaw's liability to pay compensation for length of service had been discharged under section 63(3)(c) of the *Act*, by demonstrating that Williams, on the balance of probabilities, was dismissed for just cause.

ANALYSIS

Shaw, the appellant, must bear the burden of proof for establishing that Williams was dismissed for just cause. Shaw contends that Williams' behaviour created sufficient grounds for terminating her employment, including her alleged defiant attitude, lateness and general performance. Shaw contends that Williams was continually warned during this period about these "problems" and told that if she did not rectify them her employment would be in jeopardy. Shaw's witnesses gave evidence that Williams, on certain occasions, did not comply with orders, more particularly with an incident with a customer's car due for an AirCare check-up.

Shaw's witnesses gave evidence that there were reprimands and warnings but there were no written warnings issued to Williams for any of the alleged incidents. Shaw also indicated that there were monthly and weekly meetings during which all employees were told, including Williams, what was expected of them in general, and what was required to produce a satisfactory performance of their duties.

Shaw also gave evidence that Williams had problems with daycare, but that Shaw made every effort to accommodate these concerns.

The Director found that Shaw owed compensation for length of service to Williams.

As stated, the onus is on Shaw to establish just cause. Just cause can include many different types of behaviour or actions, including gross incompetence or breach of workplace policies. Repeated infractions, even of a minor nature, of workplace rules may also meet this test if there are repeated warnings that are ignored, or other forms of progressive discipline had been imposed upon the employee.

Shaw's witnesses gave evidence that Williams had daycare needs for her children and that Shaw had attempted to help her resolve her needs.

I heard no evidence to dispute Shaw's witnesses testimony that they had made efforts to accommodate Williams with respect to her daycare needs. I heard no evidence which would indicate that Shaw was not attempting to help her remain or become a good employee while dealing with the outside distractions of everyday family life.

However, despite Shaw's evidence, I do not feel that they have met the standard of proving that Williams was dismissed for just cause. Employers must correct behaviour through progressive discipline by setting and consistently enforcing reasonable standards of performance, communicating these standards to the employee, advising the employee they are not meeting the standards and providing means to improve and finally, telling the employee that termination is the result of failing to meet these standards. While Shaw indicated that there were oral warnings given and that there was a problem with Williams' defiant behaviour, I do not feel that Shaw made it clear to Williams that her job was in jeopardy if she did not perform her work in a more acceptable manner. I also do not accept, given the evidence of Shaw's witnesses, that they in fact had just cause to terminate Williams. Based on Shaw's evidence, I do not feel that it was made clear to Williams that she had a certain amount of time to improve her performance or that her job was at risk and that she would be terminated.

I do feel that Shaw believes that it made every effort to accommodate Williams' childcare concerns and make her into what they would perceive to be a good worker, but this does not meet the standard of establishing that she was dismissed for just cause.

Based on the evidence before me and the testimony that I heard, I see no reason to overturn the Determination by the Director. I am unable to find that Shaw met the burden of establishing that the Director was in error. I therefore deny the appeal.

I also see no reason to persuade me that the Director's calculations were incorrect.

ORDER

In summary, I order that pursuant to Section 115 of the *Act*, that this appeal is dismissed and that Determination No. CDET 001026 be confirmed.

JERRY W. BROWN
Adjudicator
Employment Standards Tribunal

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