

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act R.S.B.C. 1996, C.113

- by -

Youssef Karroum
(the " Appellant ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: E. Casey McCabe

FILE No.: 2000/130

DATE OF HEARING: April 3, 2000

DATE OF DECISION: April 20, 2000

DECISION

APPEARANCES

Youssef Karroum	for himself
Al Tellier	for the employer
No one	for the Director of Employment Standards

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Youssef Karroum from a Determination dated February 7, 2000 which found that the employer had not contravened Section 63 of the *Act*.

ISSUE(S) TO BE DECIDED

Did the employer have just cause to terminate Mr. Karroum thereby discharging the employer from the obligation for termination pay under Section 63 of the *Act*?

FACTS

Novatec Process Systems Inc. (the “employer”) is located in Langley, British Columbia. The employer manufactures industrial ovens and falls within the jurisdiction of the *Act*. Youssef Karroum, the complainant, worked for the period of July 15, 1997 through February 9, 1999 as an electronic technician.

The issue in this case arose out of the complainant’s desire to have time off each Friday afternoon for religious purposes. The complainant states that he had spoken to Mr. Tellier in early December 1998 and, as a result of that conversation, felt that Mr. Tellier had given him blanket permission to be absent from work on Friday afternoons. The complainant stated that he felt that the employer had agreed to his request and in return the complainant was to work Saturday mornings. The complainant testified that prior to January 22, 1999 he had been excused from his duties at work for approximately 6 consecutive Fridays.

On January 22, 1999 the employer called a general staff meeting. At this meeting the employer circulated a Notice which reviewed certain aspects of company policy that had been previously initiated. The Notice, produced on a single page, raised four points. The Notice read:

STAFF OF NOVATEC (Notice amendment) Jan. 22/99

I feel it necessary at this time to review Company Policies that have been initiated through staff meetings to deal with issues.

1. Company hours are from 8:00 a.m. to 4:30 p.m. with 30 minutes for lunch and two 15 minute breaks at 10:00 a.m. and 2:00 p.m. These 15 minute breaks are paid breaks with the company providing the coffee and purified water.
2. Your salary is based on a 40 hour week but with the paid breaks, you are actually working 37.5 hours. With people leaving at 4:20, this privilege is being encroached upon. Starting Monday, January 25th, 1999 the 4:30 quitting time will be strictly enforced.
3. Any privileges for leaving early must be approved by management the previous business day.
4. Smoking. This issue has been a concern first and foremost due to our type of work. Smoking is totally banned in the building. Secondly, the frequency of smoke breaks was causing a disruption in the days work. Management then agreed to a paid break twice a day to allow for a smoke break. Now we are at a situation where the paid break is being taken but smoking is still being done on premises during the work day.

If any personnel feels that they would like to advance their financial position, the shop manager position still remains vacant. This, of course, would entail more responsibility on the individual which would be compensated financially by the company. So what I am saying is "A Days Work, For A Days Pay". Promotions and salary increases are recognized on performance and contributions. If management does not see this effort, then I guess we have a problem with such things happening.

These four issues are now being treated with zero tolerance. This company is now enforcing and prepared to act on any violations.

Signed "Al Tellier"

The employer testified that there had been an increasing problem in the work place with employees arriving late, leaving early and/or taking extended breaks. There was also a problem with employees smoking on the premises which is not an issue for the purposes of this case. The focus in the instant case is the complainant's absence in the afternoon of Friday February 5, 1999 and whether the complainant had been adequately informed that any unauthorized absence would be dealt with on the basis of "zero tolerance".

The employer testified that the complainant attended the January 22, 1999 meeting. The employer testified that it was made clear at this meeting that any persons wishing to have time off or requiring an extended break must inform the company of the requirement and ask for the

time off at least one day prior to the requirement. Mr. Tellier testified that everyone at the meeting understood that a breach of this policy would be treated with “zero tolerance” which meant discipline up to and including termination.

The complainant argues that although he was at the meeting he did not understand the policy to apply to his situation. He understood the policy would apply only to lateness or leaving 5 to 10 minutes early or taking an extended break. He testified that he understood through his conversations with Mr. Tellier that he could have Friday afternoons off regularly.

Mr. Tellier testified that during the week following the January 22, 1999 meeting the complainant requested that he have Friday January 29, 1999 off for religious purposes. The employer testified that the complainant asked for the Friday afternoon off on a regular basis. The employer testified that he agreed to the complainant taking Friday January 29, 1999 off and that he also agreed that the complainant could work the following Saturday morning to make up his time. The employer testified that he told the complainant that he would grant that Friday afternoon off but that he wanted the weekend to consider the merits of the blanket request.

The employer further testified that he spoke with the complainant the following week. The employer testified that he informed the complainant that he could not agree to the complainant having regular Friday afternoons off. He told the complainant that the regular shifts in the workplace were Monday to Friday 8:00 a.m. to 4:30 p.m. He informed the complainant that he had to pay the engineer extra salary for the time that the engineer spent devising a work schedule for the complainant for the following Saturday morning. He further testified that allowing the complainant to work Saturday mornings would create extra cost for the employer because he would then have to pay the engineer to work Saturday mornings to supervise the complainant. Additionally, the employer stated that he had a safety concern due to the high voltage power equipment that the complainant worked with in his capacity as an electronic technician. He was concerned about the safety aspect of the complainant working alone and unsupervised. The employer was also concerned that granting the complainant regular time off on Friday afternoons would create an expectation of similar time off amongst other employees or, alternatively, would demoralize other employees. The employer testified that he informed the complainant that he would not be allowed to take the afternoon of Friday February 5, 1999 off.

The facts indicate that the grievor did take the afternoon of Friday February 5, 1999 off. There is no evidence that he worked Saturday, February 6. The complainant returned to work on Monday February 8, 1999. He completed his shift that day. On Tuesday February 9, 1999 the complainant was terminated for unauthorized absence the previous Friday afternoon.

The question is whether the employer had just cause to terminate the grievor. The Director’s Delegate in her Determination accepted that the employer had just cause. The complainant, being the appellant, has the onus to show that the Determination was wrong. In my view the complainant has not met that onus. The complainant testified that the meeting with Mr. Tellier did not occur in the week following the January 22, 1999 employee meeting. Rather, he testified that he wasn’t sure which day a meeting occurred where taking Friday afternoon off on a regular basis was discussed but felt that it had occurred in early December 1998. The complainant further testified that he felt that the January 22, 1999 meeting outlined a policy that did not apply to him. He felt that his case was special. However, despite the fact that the complainant

attended the January 22, 1999 meeting and took Friday afternoon, January 29, 1999 off he states there were no further discussions with Mr. Tellier. Yet he worked the Saturday morning of January 30, 1999 but did not report on Saturday February 6, 1999. It is peculiar that, if he believed he had blanket permission to leave Friday afternoon and to make up the time on the following Saturday, he did not report on Saturday, February 6, 1999. I accept that he did not report that Saturday morning because Mr. Tellier had explained the employer's concerns to the complainant during the week.

I am of the view that the complainant understood the intent of the employer's policy but simply did not accept that it applied to him. I am satisfied that the employer explained the rationale for its policy to the complainant and that the employer would not be obliged to grant the complainant regular Friday afternoons off nor to provide him with work on Saturday morning due to the additional costs and administrative hardship to the employer.

For these reasons the appeal is dismissed.

ORDER

I confirm the order dated February 7, 2000.

E. Casey McCabe
Adjudicator
Employment Standards Tribunal