

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C. 13 1

-by-

Merele E. Campbell
("Campbell")

-of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	Mark Thompson
FILE No.:	98/035
DATE OF HEARING:	March 25, 1998
DATE OF DECISION:	April 29, 1998

DECISION

APPEARANCES

Merele E. Campbell	on her own behalf
Wendy L. Skipper	on her own behalf
Helen Anderson	on behalf of Ms. Campbell (by telephone)

OVERVIEW

This is an appeal by Merele E. Campbell ("Campbell") under Section 112 of the *Employment Standards Act* (the "Act") against a Determination (the "Determination") issued by a delegate of the Director of Employment Standards (the "Director") on December 23, 1997. The Determination found that Campbell terminated Ms. Wendy L. Skipper ("Skipper") without cause so that Skipper was entitled to one week's wages as compensation for length of service, plus interest. Campbell's appeal asserted that she had cause to terminate Skipper.

ISSUE TO BE DECIDED

The issue in this case is whether Campbell had cause to terminate Skipper .

FACTS

Campbell is a lawyer who operates a one-person practice from office space that she shares with another lawyer who had two secretaries. She hired Skipper as a legal secretary on September 23, 1996. Campbell had recently opened her law practice and was admittedly unsure about the business aspects of a law practice. Skipper, who was also new to her position, performed general reception and secretarial tasks, including recording accounts payable and receivable, entering data into a computer accounting system and making up pay cheques. She took cheques to the bank at which the firm had its account several times a week. Campbell engaged the services of a bookkeeper who came to the office twice a week and an accountant to prepare financial reports required by the Law Society .The firm had a software package for financial records that met the standards of the Law Society.

According to Campbell, her contract with Skipper specified eight hours work per day, five days a week on an 8:30 a.m. to 5:00 p.m. schedule. Skipper maintained that she had a flexible work schedule. Both Campbell and Skipper agreed that Skipper occasionally

arrived late for work and that Skipper had made up any hours she missed because of her tardiness. Skipper recorded her time for the first three months of her employment on a form designed to meet the requirements of the Act. The record showed a number of days on which Skipper worked 7.5 hours and occasions when she worked 9 hours. Skipper's complaint did not address her hours of work. In January 1997, Skipper stopped recording her time on the paper form. She testified that she began entering her time on a computer form after January 1997. Campbell was unaware of this change until the proceedings following Skipper's complaint had begun.

The first serious incident of disagreement before Skipper's termination occurred on April 4, 1997. Campbell informed Skipper that parts of her performance had been good, but that she should arrive for work on time and restrict her personal calls. Apparently, Campbell also took exception to Skipper eating at her desk. An argument ensued, beginning in the office area and continuing when Campbell left the building and went to the parking lot. Ms. Helen Anderson, an employee of the other lawyer in the building where Campbell's office was located, testified by telephone and recalled hearing loud voices in the April 4 incident. As Ms. Anderson put it, the two individuals "ended up outside screaming" at each other around 5 :00 p.m. Skipper said that she was shocked, but acknowledged that Campbell threatened to fire her, to which Skipper replied that Campbell should calm down and they should discuss the matter at another site. They did meet the following week for lunch. Skipper stated that she was unsure whether she could continue working for Campbell and asked for a letter of warning. Campbell did not write any disciplinary letter. Skipper did agree to arrive at work more promptly in the future, and Campbell stated that Skipper's performance improved.

Skipper was stated that she was anxious about her pay cheques. Her duties included doing at least some of the banking for Campbell's law practice, and she apparently knew the balances of one or two accounts. Skipper believed that funds in the office account might not be sufficient to cover her pay cheque, so she normally cashed her cheque immediately. Skipper never discussed this with Campbell, and Campbell stated without contradiction that Skipper had always been paid on time.

On May 1, the day before her pay day, Skipper believed that Campbell was short of funds. Skipper asked Campbell if she was going to be paid as scheduled, and according to her, Campbell "sloughed it off." Campbell acknowledged that she did not turn her mind to the subject. The following day, Skipper again asked Campbell if there would be enough money in the firm's account to cover her pay cheque. Campbell was engrossed in a file, but admitted that there might be a problem. She offered to get the appropriate amount in cash from the bank. An argument ensued, with raised voices. Again Ms. Anderson could hear the loud tones and knew the subject of the conversation was money, but could not provide further information. After about 20 minutes of the argument, Campbell told Skipper that she was fired. In her response to Skipper's complaint, Campbell stated that she fired Skipper for being "lippy." There were further recriminations about Skipper's alleged threats to take computer files away with her and custody of the office key, but these events essentially occurred after the termination.

Skipper admitted that she raises her voice when she is upset and also shakes. behaviour is This due to a medical condition and is not a true indication of her emotions.

Skipper took her cheque to the bank, and Campbell followed. The teller told Skipper that there were insufficient funds in the account to cover the cheque, but extended Campbell's overdraft protection to cover the cheque after Skipper informed her that she had been fired.

The Determination found that the Employer could not provide any documentation that Campbell had spoken to Skipper about her tardiness or use of employer time for personal business. Furthermore, the Determination found that Campbell had not produced evidence of a cause for her to lose trust in Skipper and that Skipper's fears about being paid promptly were justified.

ANALYSIS

After reviewing the evidence, it is clear that Skipper knew less about Campbell's financial status than she believed. Campbell had at least three bank accounts, a trust account for her clients, an operating account for her office and a personal account, plus a line of credit from the bank. The line of credit was available to covering operating expenses incurred before clients paid their fees. While Skipper's concerns about her pay cheque were perhaps understandable, they were not justified.

The incident leading to Skipper's termination seems to have been a case of both parties reacting emotionally to a relatively minor disagreement, perhaps exacerbated by Skipper's medical condition. Campbell acknowledged that she terminated Skipper for her attitude, which Campbell found insolent or disrespectful.

The employer bears the onus of demonstrating that there was just cause for termination. It not necessary in all cases for an employer to produce documentary evidence of warnings to employees of inadequate conduct as a precondition to termination for just cause. However, this Tribunal has held on numerous occasions that an employer must warn an employee that his or her conduct may result in dismissal to support a conclusion that there was just cause for termination. See *Strataco Management*, BC EST No. D560/97.

In this case, the termination was on the spur of the moment. The warning of April 4 concerned punctuality and attention to work. The termination was not related to either of these alleged deficiencies. Section 63 of the Act should compensate in cases of termination without prior warning.

ORDER

For these reasons, pursuant to Section 115 of the *Act*, the Determination of December 23, 1997 is confirmed, in the amount of \$412.13 together with whatever further interest that may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

Mark Thompson
Adjudicator
Employment Standards Tribunal