

**EMPLOYMENT STANDARDS TRIBUNAL**  
In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act*

- by -

Indian Homemakers Association of British Columbia  
(" IHABC ")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 96/244

**DATE OF DECISION:** July 24, 1996

## DECISION

### OVERVIEW

This is an appeal by the Indian Homemakers Association of British Columbia (“IHABC”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against Determination No. CDET 001538 issued by a delegate of the Director on March 12, 1996. In this appeal IHABC claims that no compensation for length of service is owed to Florence Hackett (“Hackett”) as she was dismissed for “just cause”.

Consideration of this appeal falls under the transitional provisions of the *Act*. Section 128 (3) of the *Act* states:

If, before the repeal of the former Act, no decision was made by the director, an authorized representative of the director or an officer on a complaint, made under that Act, the complaint is to be treated for all purposes, including section 80 of this *Act*, as a complaint under this *Act*.

I have completed my review of the written submissions made by IHABC and the information provided by the Director.

### FACTS

Hackett was employed by IHABC from May 1, 1985 to September 27, 1995. Hackett began her employment as a Research Worker, then became a Family Counsellor and was also the Acting Executive Director.

Hackett was on vacation from September 18, 1995 to October 16, 1995.

Hackett was advised by letter dated September 27, 1995 that she was being dismissed effective immediately due to insubordinate behaviour.

Hackett filed a complaint with the Employment Standards Branch (“Branch”) on October 19, 1995 alleging that she was entitled to severance pay.

The Director investigated Hackett’s complaint and, subsequently, Determination # CDET 001538 was issued.

### ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether IHABC owes compensation for length of service to Hackett.

## **ARGUMENTS**

IHABC argues that Hackett was involved in an ongoing series of insubordinate acts with respect to her “going beyond her level of authority” , “acting with insubordination to both the President and the District Vice-Presidents” and further that she was “not properly fulfilling her duties as Acting Executive Director.”

IHABC further argues that Hackett had been aware of the concerns regarding her behaviour held by the President and District Vice-Presidents since the summer of 1995.

IHABC finally argues that their lack of response was not due to the lack of diligence but intended to “allow Ms. Hackett every opportunity to provide the investigator with the truth of her dismissal on her own”.

The delegate of the Director contends that the submission to the Tribunal was the first occasion on which the allegations of “just cause” for the termination of Hackett was raised by the IHABC.

The delegate of the Director further contends that the Determination was issued based on the information provided by the parties at that time.

## **ANALYSIS**

The burden of proof for establishing that an employee has been dismissed for “just cause” rests with the employer.

It is widely accepted that in order to sustain a dismissal for just cause, the employer must establish that:

1. Reasonable standards of performance have been set and communicated to the employee;
2. Discipline has been given to the employee for failure to meet such standards, which includes ensuring that the employee has been made clearly aware that their continued employment is in jeopardy if such standards are breached.
3. A reasonable period of time has been given to the employee to meet such standards;
4. The employee did not meet those standards.

In this case, IHABC has not established that it has complied with any of these four standards.

Specifically, there is no credible evidence to support IHABC’s contention that Hackett had been made aware of the concerns with respect to her work performance or that her continued employment was in jeopardy.

The concept of “just cause” obliges an employer to inform an employee clearly and unequivocally, that their standard of performance or behaviour is unacceptable and that failure to meet the employer’s standards will result in dismissal. The main reason for issuing such a warning is to avoid any possibility of misunderstanding and to ensure that the employee is not under any false sense of security that their performance or behaviour is acceptable to the employer.

For these reasons, I conclude, on the balance of probabilities, that IHABC has not established that Hackett’s employment was terminated for just cause.

Section 63 of the *Act* provides that an employer is liable for compensation for length of service to an employee. Section 63 states:

**Liability resulting from length of service**

- 63.** (1) After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week’s wages compensation for length of service.
- (2) The employer’s liability for compensation for length of service increases as follows:
- (a) after 12 consecutive months of employment, to an amount equal to 2 week’s wages;
  - (b) after 3 consecutive years of employment, to an amount equal to 3 week’s wages plus one additional week’s wages for each additional year of employment, to a maximum of 8 week’s wages.
- (3) The liability is deemed to be discharged if the employee
- (a) is given written notice of termination as follows:
    - (i) one week’s notice after 3 consecutive months of employment;
    - (ii) 2 week’s notice after 12 consecutive months of employment;
    - (iii) 3 week’s notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 week’s notice;
  - (b) is given a combination of notice and money equivalent to the amount the employer is liable to pay, or
  - (c) terminates the employment, retires from employment, or is dismissed for just cause.
- (4) The amount the employer is liable to pay becomes payable on termination of the employment and is calculated by
- (a) totaling all the employee’s weekly wages, at the regular wage, during the last 8 weeks in which the employee worked normal or average hours of work,
  - (b) dividing the total by 8, and

- (c) multiplying the result by the number of weeks' wages the employer is liable to pay.
- (5) For the purpose of determining the termination date, the employment of an employee who is laid off for more than a temporary layoff is deemed to have been terminated at the beginning of the layoff.

Having determined that IHABC has not established "just cause" for the termination of Hackett's employment, IHABC is therefore, pursuant to section 63, required to pay 8 weeks' wages to Hackett as compensation for length of service.

The appeal by IHABC is therefore dismissed.

**ORDER**

Pursuant to Section 115 of *Act*, I order that Determination No. CDET 001538 be confirmed in the amount of \$5048.71 .

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**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**

July 24, 1996  
\_\_\_\_\_  
**Date**

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