

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

Timothy L. Goodwill

("Goodwill")

-of a Determination issued by -

The Director Of Employment Standards

(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE No.: 97/025

DATE OF HEARING: April 28, 1997

DATE OF DECISION: May 6, 1997

DECISION

APPEARANCES

Timothy L. Goodwin Tony
Arimare

on his own behalf
on behalf of North Shore Neighbourhood House

OVERVIEW

This is an appeal by Timothy L. Goodwin ("Goodwin"), under Section 112 of the *Employment Standards Act* ("the Act"), against a Determination which was issued by a delegate of the Director of Employment Standards on December 18, 1996. The Determination found that Goodwin's former employer, North Shore Neighbourhood House ("North Shore"), had established that there was just cause to terminate his employment. Goodwin's appeal seeks "payment in lieu of notice." Oral evidence was given at the hearing on April 28, 1997 by Tim Goodwin, Don Rutherford (Executive Director) and Crystal Saunders (Supervisor, Family Support and youth Workers).

ISSUE TO BE DECIDED

Did North Shore have just cause to terminate Goodwin's employment effective May 28, 1996?

FACTS

Goodwin was employed by North Shore as an Outreach Youth Worker from July 20, 1994 to May 28, 1996. He was on leave from March 12, 1996 to March 26, 1996. Goodwin's job description describes the nature and scope of his duties in the following terms :

This is community outreach work involving the establishment of positive relationships with unaffiliated youth and the development of programs designed to interest and meet the needs of the same youth. Independence of judgment and action is required in supporting and redirecting youth in distress and providing positive alternatives that are preventative or remedial in nature.

Goodwin's job description included, as a typical duty, the preparation of reports and records related to the services provided to clients.

In making the determination that North Shore had just cause to terminate Goodwin's employment, the Director's delegate relied on the following findings:

The employer provided copies of the written warnings issued to you on:

November 1, 1995
February 27, 1996 -signed by you on April 2, 1996
March 19, 1996 -signed by you
April 29, 1996
May 6, 1996

The letter of termination dated May 28, 1996 set out the reasons for your dismissal.

The written warnings which are referenced in the Determination can be summarized as follows:

November 1, 1995

.Accountability Forms submitted late by Goodwin. .Behavior is described as "completely unacceptable". .Goodwin required to submit forms "2 weeks in advance" of deadlines.

February 27, 1996

.Four specific incidents described as "serious errors in judgement" by Goodwin:
-Inappropriate use of self disclosure (June, 1995). -Inappropriate conduct toward a female colleague (December, 1995).
-Driving an inebriated 15-year old female to Abbotsford. -Repeated failure to produce Accountability Forms on time (see November 1, 1995 letter).
.Written warning of potential for "further disciplinary action and/or termination.

March 19, 1996

.Formal reprimand for failure to attend, without notice, a workshop on March 9, 1996 which Goodwin had planned.

April 29, 1996

- .Failure to attend a meeting with supervisor, Family Support and Youth Services on that day.
- .No reason given by Goodwin for his failure to attend- .Accountability Forms due on April 15, 1996 requested immediately-
- .Failure to comply will result in "further disciplinary action and/or termination".

May 6, 1996

- .Accountability F OrnlS not completed by deadline
- .Goodwin promised Fornls would be delivered by April 27, 1996 .Goodwin told his supervisor on April 29th that Fornls had been delivered on April 27th and subsequently agreed to deliver them within one week.
- .Forms not delivered on May 6, 1996.
- ."Expect further disciplinary action" if Forms not completed immediately.

The letter of May 28, 1996 sets out three major categories of Goodwin' s work performance which were unacceptable ("Inappropriate Actions; Reliability and Accountability") and contains two or more examples under each category .The letter concludes as follows:

Since you have been off work you have:

- I. Missed meetings that you scheduled, yet appeared at the NSNH to do other business.
2. Did not return important phone calls. We understand you are off with a back problem but, we cannot contact you at home. You have a home phone, cellular phone and pager and we are still unable to contact you.
- 3 You promised to return your pager twice so your substitute could carry out his duties properly, and eventually claimed you had lost the pager .
- 4 . You have promised to produce your accountability forms three different times and have yet to do so. You promised the Social Planner of the City of North Vancouver that you would produce the forms in a week and have not done so. At one point, I asked you to give us your activity logs (which should be submitted each month) for January -April and we would do the forms ourselves -no response.

As a result of the aforementioned concerns we must terminate your employment.

Goodwin was injured in a motor vehicle accident on April 16, 1996 and did not return to work prior to being dismissed on May 28, 1996.

At the hearing, Goodwin testified that his signature on the letters of reprimand (March 19, 1996; February 27, 1996) does not indicate that he agrees with their content. He also testified that he did not fully understand the meaning of "...you can expect further disciplinary action", and understood the warning in the letter of February 27th to mean that he could be dismissed if there were any further incidents of unacceptable performance such as those listed in the letter.

Donald Rutherford, North Shore's Executive Director, testified that the Accountability Forms provided critical information to the various agencies which funded programs offered by North Shore to its clients. In particular, late or inaccurate forms would likely result in program funding being diverted to other agencies. He also testified that Goodwin was made aware, several times, of the requirement to complete the Forms accurately and within the stated time deadlines. Rutherford referred to and reviewed Goodwin's complete employment history before deciding that his employment should be terminated.

Crystal Saunders (Supervisor, Family Support and youth Workers) was Goodwin's supervisor from December 1994. She wrote the various letters of reprimand and the letter of May 28, 1996 which informed Goodwin that his employment was terminated. She testified that she had discussed with Goodwin the various issues of concern to her. In particular, she had discussed with him (in April, 1995 and October, 1995) the importance of submitting Accountability Forms on time since the forms are the only means of demonstrating to the funding agency that programs are being delivered as designed.

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*.

The employer may be discharged from this statutory liability by the conduct of the employee where the employee terminates the employment, retires or is dismissed for just cause.

As noted in a recent decision of the Tribunal [cf. *Kenneth Kruger* (BCEST#DOO3/97)], the Tribunal has addressed the question of dismissal for just cause on many occasions. The following principles may be gleaned from those decisions:

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 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:
 - 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.

North Shore argues that it had just cause to terminate Goodwin's employment because; it set reasonable performance standards; Goodwin was told and understood what those standards were; Goodwin was warned in writing on two occasions (February 27, 1996 and April 29, 1996) that his employment may be terminated; and, finally, his employment was terminated for his continued failure to meet those performance standards.

Goodwin's response to the reasons offered by North Shore for terminating his employment can be summarized as follows:

Self-disclosure:

This incident did not constitute self-disclosure since the personal information given to the youths was already available to the public through the news media and through various public speaking engagements.

Inappropriate conduct:

Goodwin denies that the photograph incident occurred as alleged by his employer. He candidly admits the incident at the staff meeting was inappropriate and he has apologized to the female colleague who was involved.

Accountability Forms:

Goodwin believed that the forms were to be submitted by April 16, 1996 and would have been delivered on that date if it were not for his being injured in a motor vehicle accident on that date. The forms were delivered to his supervisor on May 28, 1996

When he was initially employed, North Shore understood that he had no computer skills and would require assistance with report writing.

Reliability:

Goodwin did not offer a complete answer to the various program events which were either cancelled or not organized by him. He argued that he arranged a replacement on certain occasions, offered no explanation about the Southwall Teen Committee issue and, while refuting the statements concerning Grant McNeil Tenant's Association, chose not to call any evidence on this issue because he did not want to involve any youths or clients in this proceeding.

Events after April 16, 1996

Any meetings which he did not attend and any telephone calls which he did not return can be attributed directly to medical conditions as a result of the injuries he sustained on April 16th. Also, North Shore had a responsibility to make alternate arrangements during his leave of absence.

In addition, Goodwin argues that his performance appraisal of October, 1995 did not indicate that his continued employment was in jeopardy.

I find it important to note that Goodwin does not deny that he received several reprimands for his work performance nor that he received two written warnings that his employment may be terminated for failure to meet North Shore's expectations. Notwithstanding that admission, he argued at the hearing that he did not understand why his employment had been terminated.

The letter dated May 28, 1996 sets out clearly the various reasons why Goodwin's employment was terminated. His failure to prepare and submit Accountability Forms on time was not the sole reason for his dismissal. Rather, that failure may be described as "the straw that broke the camel's back." Goodwin's unacceptable work performance in three areas (inappropriate actions, reliability and accountability) led to his dismissal.

When I review all of the documents, written submission, oral evidence and arguments I come to the conclusion that North Shore had just cause to terminate Goodwin's employment. North Shore has demonstrated on the balance of probabilities, that: it established reasonable standards of performance; Goodwin knew what those standards were, did not meet those standards and was warned clearly his continued employment was in jeopardy; and, failed to complete and submit Accountability Forms within the deadline set by his supervisor, Crystal Saunders.

ORDER

I order, under Section 115 of the *Act*, that the Determination be confirmed.

Geoffrey Crampton, Chair
Employment Standards Tribunal