

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-

J. R. Hair Design Ltd.
("Company")

-of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	Richard s. Longpre
FILE No.:	1999/34
DATE OF HEARING:	April 14, 1999
DATE OF DECISION:	May 3, 1999

DECISION

APPEARANCES

Mr. John Russell	for the Company
Ms. Mahy Mojtahab	for the Company
Mr. Linda Tofu	for herself
Mr. Bill Toth	for Linda Toth

OVERVIEW

This is an appeal by the Company pursuant to Section 112 of the *Employment Standards Act* (the "Act"). The Company appeals a Determination by a delegate of the Director of Employment Standards dated January 11, 1999: File No.090-893 .The Determination concluded that Linda Toth, a hair stylist with the Company, was terminated from her employment with the Company without just cause and was owed compensation for length of service, vacation pay and interest in the amount of \$2015.57.

The Company called two witnesses: John Russell, owner of the Company and Ms. Mahy Mojtahab, a hair stylist with the Company. Linda Toth testified on her own behalf.

ISSUE TO BE DECIDED

The Company challenged the delegate's conclusion that John Russell had "failed to meet the onus of showing that he had just cause to dismiss Ms. Toth". During the course of the hearing, the Company raised a number of other reasons for Toth ' s termination.

FACTS

Toth commenced employment at Old Orchard Beauty Salon in April 1991. At the time of her termination, the beauty salon was operated by John Russell.

On May 6,1998, Toth was styling a woman's hair. The customer requested that her hair be bleached a very light color. Certain steps had to be taken which took some time to complete. The customer then had to sit for twenty-five minutes while the bleach on her hair took affect. She was placed in a chair a several feet from where Toth worked. Toth asked Ms. Gail Hill, the manager of the shop, to also watch her customer during this stage. During this period, Toth styled another customer's hair.

The incident that resulted in Toth's termination, occurred during the twenty-five minute period. Bleach in the woman's hair came in contact with the skin on the woman's forehead. She immediately felt the bleach burn her scalp. Hill quickly washed the bleach from the woman's scalp. Toth went across the street and bought some cream for the burns. A chemical burn across the hair line remained. The woman was very upset. Toth, Hill and Russell were very apologetic to the woman.

Mojtaheb testified that Toth should not have started with another customer while the bleach was in the woman's hair. In her view, Toth was obliged to watch the client for the twenty-five minutes. In questions from Toth, Mojtaheb agreed that most stylists would have started with another customer but she felt that was not proper. Toth had never experienced a similar problem on what was a common component in her work.

There was a subsequent meeting with the staff about the incident. Toth raised the issue of whether the product used to bleach the hair had been the problem. It had been a new kind of bleach used in the shop. Hill agreed to look into the product but the evidence showed that the product had not caused a problem before or after the incident.

Russell gave Toth two weeks notice of her termination. During that period, Toth looked for employment with another salon. When asked by her customers, she gave them her home telephone number and invited them to call her after she had left. She also had a number of her regular customers' telephone numbers which she called after starting at another location. Russell and Mojtaheb saw Toth having these conversations; however, Toth was never told to stop.

In his appeal submission and at the hearing itself, Russell introduced a number of other complaints against Toth. He explained that other customers had complained about Toth's work. He said that he was tired of talking to her about their complaints. He also alleged that Toth was racist. He gave examples of comments she made and service she provided to ethnic customers. Russell and most other stylists in the shop are Iranian. He and Mojtaheb alleged that Toth treated them with contempt.

Toth took exception to the allegation that she was racist. She explained that 90% of the store's customers were ethnic; she was very busy with repeat customers. Her only difficulty was in communicating with some customers that did not speak English very well.

Russell said that since Toth's leaving, work in the shop has greatly reduced. He believed that it was a result of the community hearing about the incident. His accountant was present to verify the reduction of work the shop was now performing. Toth noted, however, that the woman continued to have her hair styled at Russell's shop. She also explained that not many customer's followed her to the new location; she is less busy now than while at the Company's shop.

ANALYSIS

The delegate considered the evidence and concluded there was not just cause for dismissal. An appeal of a delegate's determination is not a "fresh look" at the case. The issue before me is whether the Company established that the delegate's decision was incorrect.

At the outset, an allegation that someone is racist is very serious. The Company's allegation was an afterthought to the charges against Toth. They were not mentioned to the delegate. They were never mentioned to Toth. More telling, Toth was very busy at Russell's shop where most of the customers are ethnic Canadians. The shop itself was very busy. If Toth had demonstrated such a negative attitude, neither would have occurred. The Company's allegation of racism is dismissed.

Toth's incident was serious. I understand Russell's reaction. However, Toth's background did not make termination obvious. The evidence does not suggest that Toth was incapable or sloppy. She was successful at the shop. Russell said that he had concerns with Toth's past work performance. There was no suggestion of progressive discipline.

While the business may be slower, I saw no basis to blame this on Toth and this one incident. The woman who was at the center of this incident remains a customer. Russell questioned whether Toth apologized. I am satisfied that she apologized to the customer, Hill and most likely to Russell. She was able to recall when she spoke to them and what she said. The delegate's reasons for finding there was not sufficient cause for termination is understandable.

During the course of the hearing, Russell raised these new issues in attempt to justify his decision to terminate Toth with two weeks notice. Russell did not raise these concerns with the delegate as reasons Toth was terminated. Russell had the right to discipline Toth. However, I accept the delegate's Determination that Russell did not establish just cause for termination. One last point. It appears that Toth was not given her proper pay on her last pay cheque. I will ask the delegate to look into that matter .

ORDER

Pursuant to Section 115 of the *Employment Standards Act*, the Determination, dated January 11, 1999: File No.090-893, is confirmed. The Company is directed to pay Toth \$2015.57 plus interest from January 1, 1999.

Richard S Longpre
Adjudicator
Employment Standards Tribunal