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 -

Floormasters Janitorial Inc.
("Floormasters")
or Beatrice Churchill or Laurence E. Churchill

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE NO.: 98/155

DATE OF HEARING: April 29, 1998

DATE OF DECISION: May 13, 1998

DECISION

APPEARANCES

Laurence E. Churchill	The Appellant
Brad J. Greenlaw	Complainant
Sheldon B. Carberry	Complainant

OVERVIEW

This appeal is by Floormasters Janitorial Inc. ("Floormasters") or Beatrice Churchill or Laurence E. Churchill pursuant to section 112 of the *Employment Standards Act* (the "*Act*") and it is against a Determination by a delegate of the Director of Employment Standards (the "Director") which is dated February 18, 1998. The Determination deals with two separate complaints. It finds that Sheldon Carberry was terminated without just cause or notice and that he is owed compensation for length of service as a result. It also finds that Floormasters made a $400 deduction from Brad Greenlaw's pay which is contrary to section 21 of the *Act*.

ISSUES TO BE DECIDED

At issue are decisions of the Director to combine the two complaints for the purposes of the investigation and, later, for the purpose of the Determination. Laurence Churchill also complains of the decision of the Registrar of this Tribunal to combine what the appellant views as two entirely separate appeals.

At issue is the matter of whether or not the employer had just cause in terminating Carberry.

At issue is the matter of whether or not the employer is entitled to deduct $400 from Greenlaw's pay. Churchill, who operates Floormasters, argues that Greenlaw was incorrectly paid compensation for length of service, and further that, in deducting the $400, he is merely recovering moneys paid in error.

FACTS

Sheldon Carberry worked as a janitor for Floormasters but left the company in 1996 for Ontario. He returned to British Columbia in 1997 and was rehired by Churchill in February of that year. His last day of work was September 2, 1997.

Brad Greenlaw also worked as a janitor for Floormasters. The period of his employment was June 16, 1997 to September 20, 1997.

Events Surrounding Carberry's Termination

Carberry asked for a raise. The result was that either Laurence Churchill agreed to raise his pay, or he did not, and was misunderstood by Carberry.

When he received his next pay cheque, Carberry realized that he was being paid at the same old pay rate. That led him to telephone Churchill and complain about his pay. As conversation progressed it became rather heated. According to Churchill, Carberry grew so angry that he threatened "to get him" and he was fired for that threat. Carberry denies making any such threat. There are no witnesses and Churchill neither notified police of the threat, nor took any other measure with a view to protecting himself.

Churchill describes Carberry as having a violent temper. He recounts that Carberry flew into a similar rage in 1996 while working at the Safeway store in Langley. I conclude that whatever happened that day, it could not have been all that terrifying. Had Carberry really upset Churchill at that point, it is most unlikely that he would have been rehired on returning to the province.

The Greenlaw Matter

Greenlaw could not work for a period in August of 1997. According to Churchill, Greenlaw's wife was ill and Greenlaw was absent from work for that reason. Greenlaw says both his wife and he were ill. I am presented with nothing which allows me to determine which version of events is true.

Churchill decided that he was going to move Greenlaw to a store in Coquitlam. According to Churchill, Greenlaw objected to the daily travel. Churchill says that Greenlaw then refused to report for work and that he was fired for that. Greenlaw presents me with an entirely different version of events. Floormasters owed him nearly $1,000 in overtime pay. Greenlaw says that he pressed Churchill to pay the overtime and with that he was fired. As above, I am presented with nothing which allows me to determine which version of matters is true.

On terminating Greenlaw, Churchill decided to pay him a week's 'severance', $400. Churchill did not at the same time pay Greenlaw for his overtime work. Greenlaw filed a complaint at an office of the Employment Standards Branch. The investigating delegate found that a total of $1,011.10 of overtime pay was owed Greenlaw. Churchill agreed to pay the amount but instead of issuing a cheque for $1,011.10, Churchill deducted the amount paid out as "severance". Churchill says that on reconsidering the termination, he decided that he had just cause and that compensation for length of service had been paid in error.

ANALYSIS

The appellant complains of the merging of complaints and appeals but I fail to see how that has adversely affected him in any way. Most importantly, I find it fully consistent with a purpose of the *Act*, namely, to provide *"efficient procedures for resolving disputes over the application and interpretation of (the) Act"* (section 2 of the *Act*). The Registrar's decision is, moreover, entirely consistent with the *Act* given section 107. That section sets out that the Tribunal *"may conduct an appeal or other proceeding in the manner it considers necessary … "*.

Section 63 of the *Act* sets out that employers are liable for compensation for length of service where employment is beyond 3 consecutive months. That section of the *Act*, at subsection (3) goes on to set out how that liability can be discharged.

> (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 weeks' notice after 12 consecutive months of employment;*
>
> *(iii) 3 weeks' notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 weeks' 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***. (my emphasis)

A single act may be of such a serious nature that it justifies termination. As may less serious misconduct when repeated, or the chronic inability of an employee to meet the requirements of a job. In all cases the onus is on the employer to show just cause.

Where there are repeated examples of less serious misconduct, it is the well established view of the Tribunal [*Randy Chamberlin and Sandy Chamberlin operating as Super Save Gas*, BCEST No. D374/97] that an employer will have just cause where it shows the following:

a) A reasonable standard of performance was established and communicated to the employee;

b) the employee was clearly and unequivocally notified that his or her employment was in jeopardy unless the standard was met;

c) the employee is given the time to meet the required standard; and

d) the employee continued to demonstrate an unwillingness to meet the standard.

As matters are presented to me by the employer, I am quite unable to see just cause in the case of Carberry's termination. Churchill simply has no proof of what he alleges. Indeed, what little evidence there is of the event is to the contrary. I refer to the fact that Churchill neither informed police of the threat, nor took any other step to protect himself.

I find also that Churchill has wrongly withheld wages from Greenlaw. The employer argues that an error was made in paying Greenlaw compensation for length of service. But I fail to see the error. All I am presented with is a series of allegations with no firm support for any of them. As the employer presents matters to me, it fails to show just cause for the termination and, as such, that its liability to pay compensation for length of service is discharged. It follows that the employer must now pay the $400 that was wrongly deducted from Greenlaw's overtime wages.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination dated February 18, 1998 be confirmed. Brad J. Greenlaw is owed $408.36 together with whatever further interest has accrued pursuant to Section 88 of the *Act*, since the date of issuance. Sheldon B. Carberry is owed $425.34 together with whatever further interest has accrued pursuant to Section 88 of the *Act*, since the date of issuance.

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Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal