

An appeal

- by -

Dorothy Povelofskie
("The Employee")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: Sheila McDonald

FILE No.: 2001/68

DATE OF DECISION: May 4, 2001

DECISION

OVERVIEW

Ms. Dorothy Povelofskie, a former employee of Paul S. Pollock Enterprises Ltd. Operating as The Canadian Tire in Williams Lake, BC, appealed the Determination dated January 3, 2001 by R. A. Stea, a delegate of the Director of Employment Standards. The Director determined that the *Employment Standards Act* (“the Act”) had not been contravened. The Director found that Dorothy Povelofskie’s employment had been terminated for just cause.

Ms. Povelofskie appealed the Determination stating that she did not believe that her employer had grounds to dismiss her for misconduct.

ISSUE

There is one issue to be determined in this case: Was Ms. Povelofskie’s employment terminated for just cause.

THE FACTS AND ANALYSIS

Ms. Povelofskie worked for The Canadian Tire in Williams Lake from March 5, 1994 to September 29, 2000 as a cashier at the rate of \$9.20 per hour. She filed a complaint with the Employment Standards Branch on October 6, 2000 stating that she felt she was not fired due to misconduct. She stated that in her 5 ½ years with The Canadian Tire she only missed one day due to illness and was never late, which should in her opinion entitle her to severance pay. She states in her complaint that she signed an agreement stating that if her cash was short and she was written up three times she could be terminated. She states that she was written up three times but never signed that she was written up.

The Determination indicates that Ms. Shelley Kannstaedter, the cashier manager for The Canadian Tire submitted that due to cash shortages the employer implemented a written policy to all cashiers, which took effect on February 1, 2000. Ms. Povelofskie received a copy of the policy and signed it. The policy stated, **“THERE WILL BE AN AMENDMENT TO THE CASHIER POLICY STARTING FEB. 1ST 2000, ALONG WITH THE 2.00 SHORTAGE POLICY THERE WILL NOW BE 25.00 ONE. ANY SHORTAGES OF 25.00 OR MORE IN ONE LUMP SUM WILL RESULT IN BEING WRITTEN UP. THREE OR MORE OF THESE IN A SIX MONTH PERIOD WILL RESULT IN DISMISSAL.”**

Ms. Kannstaedter advised the Director that the Ms. Povelofskie had four shortages in excess of \$25.00, during the period of February 1, 2000 to September 22, 2000 which included: July 14/00 \$70.03; August 18/00 \$32.94; August 25/00 \$43.86 and September 22/00 \$112.50.

These shortages are outlined in documentation provided to The Tribunal by Ms. Kannstaedter. The documentation shows the shortages in Ms. Povelofskie's cash as 8 shortages in 1998, 18 shortages in 1999 and 12 shortages in 2000.

The Determination states that according to Ms. Kannstaedter after the fourth shortage in 2000 of Ms. Povelofskie's cash, a decision was made to terminate her. The documentation provided by Ms. Kannstaedter shows that on April 12/00 Ms. Povelofskie was given notice of a cash shortage on of \$11.41 on April 4/00; on August 1/00 notice was given of a cash shortage of \$70.03 on July 14,2000 and on September 28/00 notice was given of a cash shortage of \$112.50 on September22, 2000.

The Determination states that Ms. Povelofskie confirmed that she was written up three times but never signed anything confirming the shortages. She questioned the validity of the employer's record of her shortages as the office staff counted the daily cash. She stated that she had no way of verifying their accuracy. She further alleged that Ms. Kannstaedter's daughter filled her position.

In her submission to The Tribunal Ms. Kannstaedter states that her daughter is a high school student that works weekends and was hired to replace several students that left to pursue other ambitions. She further states that her daughter was not the only person hired after Ms. Povelofskie's dismissal.

Section 63 of the *Act* outlines the employer's liability for length of service after three consecutive months, it further states:

(3) The liability is deemed to be discharged if the employee

(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.

Ms. Povelofskie was aware of the policy regarding cash shortages as witnessed by her signature and she acknowledged that she was written up three times. She was aware that being written up three times could result in her dismissal. The records provided by the Ms. Kannstaedter show a history of cash shortages by Ms. Polelofskie including two substantial shortages recorded on October 19, 1999 of \$300.13 and December 19, 1999 of \$99.05.

I have no evidence to show that these cash shortages are not accurate. I have no evidence to show that Ms. Povelofskie was dismissed so that Ms. Kannstaeder's daughter would be hired. Based on the evidence I conclude the Ms. Povelofskie was dismissed for just cause based on misconduct for cash shortages in accordance with the Employer's policy.

ORDER

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

SHEILA MCDONALD

**Sheila McDonald
Adjudicator
Employment Standards Tribunal**