

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 -

Michael J. Sept and Leanna Sept, operating Time-Out Enterprizes
("Time-Out")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

FILE N_{o.}: 98/220

DATE OF **D**ECISION: June 18, 1998

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Michael J. Sept and Leanna Sept operating Time-Out Enterprises (“Time-Out”) of a Determination which was issued on March 24, 1998 by a delegate of the Director of Employment Standards (the “Director”). In the Determination, the Director found the Time-Out had contravened Section 63 of the *Act* in respect of the employment of Warren McIntyre (“McIntyre”) and ordered Time-Out to cease contravening the *Act* and to pay an amount \$234.50.

ISSUE TO BE DECIDED

The issue raised by the appeal is whether Time-Out has met the burden of persuading the Tribunal that the Director erred in fact or in law in reaching the conclusions upon which the Determination is based.

FACTS

Time-Out terminated the employment of McIntyre on July 16, 1997. McIntyre complained to the Director. Time-Out alleged McIntyre was dismissed for just cause. Following an investigation, the Director concluded Time-Out had not demonstrated it had just cause to dismiss McIntyre. Time-Out also alleged that, in any event, McIntyre had been given written notice of termination in accordance with the requirements of the *Act*. The Director concluded that McIntyre had not been given written notice of termination as required by the *Act*. There being no other basis upon which the obligation of Time-Out under Section 63 of the *Act* could have been discharged, the Director ordered Time-Out to pay length of service compensation to McIntyre.

The substance for the conclusion by the Director that Time-Out did not have just cause to dismiss McIntyre and did not provide written notice of termination as required by the *Act* is found in the following statement:

The employer has not provided the writer with tangible evidence to support his actions in summarily dismissing the complainant. Given that the complainant states he did not receive written working notice either on July 4th, (as suggested by the employer,) or at the time of termination, nor payment of compensation for length of service to date, I conclude that the complainant is entitled to two weeks' compensation for length of service . . .

The principal basis for the appeal is the assertion by Time-Out that the investigating officer was biased and discriminatory because he had taken a personal dislike to one of the principals of Time-Out, Michael Sept.

Apart from that assertion, Time-Out reiterates that it did have just cause to terminate McIntyre and, in any event, had given McIntyre proper notice of termination.

ANALYSIS

Allegations that the judgment of an investigating officer acting on behalf of the Director in an Employment Standards matter have been influenced by personal bias and discriminatory conduct is a serious allegation. Such allegations impact significantly on the credibility of the individual and the Branch and in many cases, particularly in areas of the province where the individual is the only representative of the Director, can have serious consequences on both the ability of the individual to perform their job and on their career. Persons making such allegations to the Tribunal in support of an appeal that seeks to set aside a Determination in which the individual was involved must have clear and cogent evidence to support their allegations. This

requirement is justified by the potentially serious consequences on the individual that such allegations can have.

No such evidence is present in this case. The appeal of the determination on this point is dismissed.

On the issue of whether the employer had just cause to dismiss McIntyre, the burden to demonstrate some error has been made by the Director is on Time-Out. I can find nothing in the appeal that persuades me an error has been made.

Apart from a letter of reprimand for tardiness which the employer issued to McIntyre on or about December 14, 1996 there was no record indicating a standard of performance had been communicated to the employee, that he had failed to meet that standard or that he was notified his continued employment was in jeopardy for a continuing failure to meet the standard. Demonstrating these matters are part of the burden placed on employers when seeking to show just cause where the employer is relying on instances of minor misconduct.

If an employer alleges just cause for summary dismissal, as it appears Time-Out has sought to do in this case, the burden on the employer is to establish the facts that are sufficiently serious to justify such a response. Even accepting Time-out's version of events which resulted in the dismissal of McIntyre on July 16, the facts are not sufficient to justify summary dismissal.

The *Act* places on the employer the obligation to provide written notice of termination to an employee. That obligation includes the obligation to show, on balance, that the employee received the required notice. In light of the denial by McIntyre of receipt of any written notice of termination and in the absence of any objective support for the assertion that written notice was given, no demonstrable error on the part of the Director has been shown.

The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated March 28, 1998 be confirmed.

David Stevenson
Adjudicator
Employment Standards Tribunal