

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 -

Robert Levit-Geciw
("Levit-Geciw")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2000/269

DATE OF HEARING: June 23, 2000

DATE OF DECISION: July 5, 2000

DECISION

APPEARANCES:

Robert Levit-Geciw	on his own behalf
Troy Straith, President	for Straiths Vancouver Ltd.
No appearance	for the Director of Employment Standards

OVERVIEW

This is an appeal by Robert Levit-Geciw (“Levit-Geciw”), filed pursuant to section 112 of the *Employment Standards Act* (the “Act”), from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on March 20th, 2000 under file number ER 097744 (the “Determination”).

The Director’s delegate determined that Straiths Vancouver Ltd. (“Straiths” or the “employer”) had just cause to terminate Mr. Levit-Geciw’s employment in early November 1999 [see section 63(3)(c) of the *Act*] and, accordingly, Straiths was not obliged to pay Levit-Geciw any compensation for length of service. In the absence of just cause, Levit-Geciw would have been entitled to 3 weeks’ wages or 3 weeks’ written notice in lieu of compensation; the employer concedes that neither 3 weeks’ written notice, nor the equivalent compensation for length of service, was given to Mr. Levit-Geciw.

Levit-Geciw’s appeal was heard at the Tribunal’s offices in Vancouver on June 23rd, 2000. Mr. Levit-Geciw appeared as the sole witness on his behalf; Mr. Troy Straith (president and director) and Ms. Margaret Chiarella (sales associate) testified on behalf of the employer. The Director was not represented at the appeal hearing.

ISSUE ON APPEAL

The only issue before me is whether or not Straiths had just cause to terminate Levit-Geciw’s employment in November 1999.

Although I did hear some evidence with respect to unpaid overtime and statutory holiday pay, I note that these complaints were never crystallized in the original complaint filed with the Employment Standards Branch on November 17th, 1999 and, in any event, were not addressed in the Determination. I advised Mr. Levit-Geciw during the hearing that my decision would only address the “just cause” issue.

FACTS AND ANALYSIS

Straiths is a retailer of quality (and commensurately expensive) men’s and women’s fashions. Both Mr. Straith and Levit-Geciw agree that Straiths’ customers are both demanding and discerning and, not surprisingly, expect the highest level of customer service. I suppose it is a

corollary of the foregoing that the business of Straiths ought to be conducted in a dignified and respectful manner.

Levit-Geciw was employed as a sales representative for some 3 1/2 years and by all accounts was an excellent sales representative who provided superior service to his clientele and was able to consistently produce high sales volumes. His compensation consisted of both a base salary and commissions; his annual earnings exceeded \$60,000.

However, and this is the nub of this case, Mr. Levit-Geciw was a volatile individual who frequently clashed with his fellow employees. Various incidents of his volatility (and the ensuing results) are detailed in the Determination. In his testimony before me, Mr. Levit-Geciw either denied or stated that he could not recall these incidents. Levit-Geciw admitted receiving a warning letter in 1996 but denied having received a later written warning in July 1998. I accept Mr. Straith's evidence that the July 21st, 1998 warning letter was, in fact, hand delivered to Levit-Geciw in July 1998 and I also accept that the various incidents set out at page 2 of the Determination actually occurred.

If these various incidents did not occur, Mr. Levit-Geciw could have called former employees as witnesses to corroborate his position that these incidents were fabricated by the employer--he did not do so. Further, if Levit-Geciw did not have a fiery temper, which on occasion got the better of him, why would he have agreed to attend a series of "anger management" counselling sessions in June 1999? Indeed, why would the employer have advanced Levit-Geciw the funds to attend the course if there was, in fact, no problem in this area?

Although Ms. Chiarella admittedly only worked with Levit-Geciw for a period of a few months she was able to recall several instances--some directed towards her; others incidents were directed to fellow employees--where Levit-Geciw's temper manifested itself in rather abusive behaviour.

As noted above, Levit-Geciw either denied or stated that he did not recall most of the incidents set out in Determination. The one exception--which he recalled very clearly--relates to the culminating events that occurred in early November 1999. Levit-Geciw agrees that he arrived at work on Saturday, November 6th, 1999 in a very tired state. He told his sales colleague, Mr. Barker, that he was so tired he planned to leave work. According to Levit-Geciw, Barker persuaded Levit-Geciw to go rest (upstairs on the third floor of the store) for a time which Levit-Geciw did. Levit-Geciw admits he may well have slept for a few hours. When he awoke and returned to the men's wear department on the first floor of the store, Levit-Geciw admits that he made a somewhat inappropriate comment about Barker's need to put away some shirts and ties that, I take it, Barker had been showing to a customer. In any event, the two employees got into quite a row, with Barker telling Levit-Geciw "to mind his own fucking business" to which Levit-Geciw replied: "Why don't you just fuck off?".

I wish to reiterate, at this point in the narrative, that Straiths is not a logging camp or an oil rig where foul language might be an accepted part of the workplace culture. Not only was the language used--by both employees--totally unprofessional in and of itself, their argument was so heated that two female employees working on the floor above them (one of whom was Ms. Chiarella) felt compelled to immediately telephone Mr. Straith and asked that he attend at the store straight away before the two combatants "killed each other". Several customers, who were

in the store when the argument broke out, promptly left the store without making any purchases. One can only wonder if this incident might have, in some fashion, damaged the store's goodwill with those customers or with anyone else they might have subsequently spoken to about the matter.

Both men apparently announced to each other that they "were leaving" (neither seemingly had any authority to leave without permission) but neither did so. Shortly after he arrived at the store on the Saturday, Mr. Straith met with both Barker and Levit-Geciw and sorted out the dispute as best he could. Both men apparently apologized to each other but, curiously, there is no evidence that Mr. Levit-Geciw ever apologized to his employer for his misconduct. Mr. Straith testified that, on reflection, it was this Saturday incident that precipitated his decision to discharge Levit-Geciw. Barker was subsequently disciplined and Levit-Geciw was discharged. The discharge was not carried out until the following Wednesday.

On the following Monday, although scheduled to work, Levit-Geciw telephoned Mr. Straith early in the morning and said that he was too tired to report for work. Levit-Geciw says that he slept through the next day and did not report--although scheduled to work--on the Tuesday. Levit-Geciw says his Tuesday absence was excused; Mr. Straith says it was not and that several unsuccessful attempts were made to contact Levit-Geciw by telephone (messages were left on his answering machine) on the Tuesday.

In my view, it does not matter whether the Tuesday absence was excused or unexcused (although I believe it to be the latter) since the decision to terminate had already been made quite independent of the Tuesday absence and Mr. Straith merely wished to carry out the termination in a face-to-face meeting, as he did the next day. On Wednesday, Mr. Straith spoke by telephone with Levit-Geciw and asked to meet with him even though it was a scheduled day off for Levit-Geciw. Levit-Geciw knew what the meeting was about without being told--he inquired of Mr. Straith "Am I being fired?" and Straith replied that he was. The two met at a local coffee shop; had a brief but cordial meeting at which Levit-Geciw was handed his termination letter (Attachment 3 to the Determination).

Although Levit-Geciw denied having been given the July 21st, 1998 written warning, I find it more probable than not that the warning letter was given to him. The third paragraph of that letter could not be clearer:

"This letter serves as FINAL written notice that Straiths will no longer tolerate any further disruptions to the working environment, nor its staff, due to your erratic, uncontrollable, and hostile behaviour."

The July 21st warning letter concludes:

"If there are any further situations of dispute or hostility between yourself and any other staff member your employment at Straiths will be terminated immediately."

To summarize, although Levit-Geciw was a gifted salesperson, his performance was marred by a volatile temper and punctuated by repeated inappropriate outbursts during his 3 1/2 year tenure with Straiths. Levit-Geciw was warned, on several occasions, that these outbursts must cease.

Indeed, he was informed, *in writing*, in July 1998 that his job was on the line if these sorts of outbursts continued. Further, the employer went so far as to require Mr. Levit-Geciw to take an anger management course in June 1999, something that I do not believe the employer would have demanded without there being some legitimate concern. Levit-Geciw admits that on November 6th, 1999 he loudly cursed Mr. Baker (and, in fairness, it should be noted that Mr. Baker seems to have given as good as he got) and that the two of them caused quite a brouhaha in the store.

Had the November 6th incident been the only blemish on Levit-Geciw's work record it still might have justified his termination given the nature of the working environment. I need not decide that point, however, given my finding that the November 6th incident was but the latest in a string of inappropriate behaviours. The November 6th incident was a further (and, as matters turned out, final) example of the very sort of behaviour that Levit-Geciw had been warned would result in his termination.

In my opinion, the delegate did not err in finding that Straiths had just cause for termination and, accordingly, Straiths was not obliged to pay Levit-Geciw any compensation for length of service.

ORDER

The appeal is dismissed. Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal