

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-

S & A Enterprises (1994) Inc.
("S & A")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR:	Kenneth Wm. Thornicroft
FILE NO.:	97/217
DATE OF HEARING:	June 19th, 1997
DATE OF DECISION:	July 2nd, 1997

DECISION

APPEARANCES

Bruce C.E. Russell for S & A Enterprises (1994) Inc.

Kimberley J. Nelson on her own behalf

OVERVIEW

This is an appeal brought by S & A Enterprises (1994) Inc. (“S & A” or the “employer”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on March 10th, 1997, under file number 011-495. S & A operates two motor vehicle service stations, both located in Burnaby, B.C., under the “Mohawk” trade name. The two stations operate under the firm names, “Cascades Mohawk” and “Holdom Mohawk”, respectively. The “Cascades Mohawk” is a combined service station “convenience store”.

The Director determined that S & A owed its former employees, Ms. Kimberley J. Nelson (“Nelson”) and Mr. Asdullah Omar-Ali, certain monies under the *Act*. The present appeal deals with Ms. Nelson’s claim. The employer says that Nelson, who was formerly employed as a cashier at the “Cascades Mohawk” service station, was properly terminated for negligence and for violating her fiduciary duties with respect to the handling of money. The Director rejected the employer’s contention that Nelson was terminated for just cause and, based on Nelson’s thirteen months’ tenure, awarded Nelson two weeks’ wages (\$513.78) plus interest (see S. 88 of the *Act*) as compensation for length of service pursuant to Section 63(2)(a) of the *Act*.

The appeal was heard at the Tribunal’s offices in Vancouver, B.C. on June 19th, 1997 at which time I heard testimony from Mr. Shamir Sidi, a director and officer of S & A, on behalf of the employer, and from Ms. Nelson on her own behalf. No other witnesses testified before me, nor did the Director appear to tender any evidence or make any submission in support of the Determination.

FACTS

There does not appear to be any dispute with respect to certain key facts. Nelson’s typical work day began at 7:00 A.M. and ended at about 3:00 P.M. On Monday, May 13th, 1996, approximately two to three hours after she came on duty, Nelson left work due to a throat infection. Nelson admits that she left several rolls of one- and two-dollar coins on a counter behind the cash register. It should be noted that this particular area is not generally accessible by store customers. These coins subsequently went missing and, consequently, Nelson was terminated.

Nelson's uncontradicted evidence before me is that prior to leaving the store she advised the on-duty manager, Mr. Salesh Maharaj, that the coins were on the counter and needed to be placed in the on-site safe. Nelson says that the coins were still on the counter when her replacement, a woman named "Rose", came on duty. Later that same morning, Nelson received a telephone call from Mr. Maharaj inquiring as to the whereabouts of the coins--several calls went back and forth between Nelson and Mr. Maharaj and "Rose" but the coins were never found.

Both Nelson and Mr. Sidi confirm that a few days later Sidi telephoned Nelson and told her that unless she was willing to re-pay the value of the missing coins (about \$150), she was going to be fired; Nelson refused, and was subsequently terminated.

ISSUE TO BE DECIDED

Did the employer have just cause to terminate Nelson?

ANALYSIS

I wish to note that although the Employer's case before me was framed in terms of a failure to follow standard work practices with regard to the handling of money, the real reason for Nelson's termination was not the missing money *per se*; rather, I find that Nelson was terminated by reason of her refusal to reimburse her employer for the missing funds.

In my view, the employer (who does not allege that Nelson misappropriated the missing coins) did not have just cause to terminate Nelson simply because she refused to reimburse her employer for the missing funds. Nor can I conclude, on the basis of the evidence before me, that she violated any work rule regarding the handling of money.

The only evidence before me is that prior to leaving the store, Nelson advised the on-duty manager, Salesh Maharaj, that the coins were on the counter. Mr. Maharaj apparently did not advise Nelson to place the coins in the on-site safe and when "Rose" came on duty the coins were still on the counter. (I wish to note parenthetically that no disciplinary action of any kind appears to have been taken against Mr. Maharaj or "Rose.") The only evidence before me is that when Nelson left the store to go home due to illness, the coins were still on the counter and that responsibility for the coins had been assumed by Maharaj.

Mr. Maharaj did not testify before me and the sole Employer witness, Mr. Sidi, was not present at the store when the events in question occurred.

There is no evidence before me, and the employer does not assert, that Nelson personally misappropriated the coins. As noted above, I find that the real reason for Nelson's termination was her refusal to reimburse the Employer for the missing funds. I further find that this refusal on

her part was entirely proper and that by reason of Section 21(2) of the *Act*, the Employer was not lawfully entitled to demand reimbursement.

ORDER

Pursuant to Section 115(1)(a) of the *Act*, I order that the Determination in this matter, dated March 10th, 1997 and filed under number 011-495, be confirmed as issued with respect to the respondent Nelson in the amount of \$513.78 together with interest to be calculated in accordance with Section 88 of the *Act*.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal