

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-

Integrity Hair Group Inc.
("Integrity" or the "employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft
FILE No.: 1999/285
DATE OF DECISION: July 21, 1999

DECISION

OVERVIEW

This is an appeal filed by Raymond Mol, on behalf of Integrity Hair Group Inc. (“Integrity” or the “employer”), 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 April 20th, 1999 under file number ER092-612 (the “Determination”).

The Director’s delegate determined that Integrity did not have just cause to terminate the employment of Terry Adams (“Adams”) and, accordingly, was obliged to pay Adams 2 weeks’ wages as compensation for length of service (see section 63 of the *Act*) plus concomitant vacation pay and interest. Adams was awarded \$600.70 in total.

ISSUE TO BE DECIDED

Did Integrity have just cause to terminate Adams’ employment and, therefore, was not obliged to pay him any termination pay [see section 63(3)(c) of the *Act*]?

FACTS AND ANALYSIS

Adams was employed as a hair stylist with the employer from September 2nd, 1997 until his termination on or about September 18th, 1998. The record before me shows that, in addition to whatever verbal warnings that may or may not have been given to Adams, the employer did issue two written warnings and a letter of termination, the particulars of which are as follows:

December 8th, 1997: “I must tell you candidly that the probability of success is not very high for you right now.” The employer complained that Adams’ “performance is being restricted by”, *inter alia*, his tardiness, his failure to work well with other staff and his refusal to coordinate his breaks with other staff members.

April 22nd, 1998: this memorandum to Adams details such deficiencies as arriving late for work, not being at work during the day when clients arrive, failing to be “neat and presentable” in appearance and failing to treat co-workers with respect. The memorandum concludes “You must make an effort to comply with these common sense points if you wish to remain employed with Integrity Hair Group”. Adams acknowledges having discussed the contents of this memorandum with his employer but denies having actually signed the letter.

September 18th, 1998: The letter noted that Adams “malign[ed] clients and staff in a most inappropriate way” and referred to an incident where Adams referred to a client’s hair and stated “If I had to work with hair like that, I would quit the industry”. A second comment was allegedly made that another client had “too much time on her hands” and that she always “laughed at stupid

jokes”. These comments may have been overheard by other clients. The letter also referred to other inappropriate comments about other stylists and/or clients’ “hormones”. The letter concluded: “After reviewing the overall situation, we feel that we have no alternative but to terminate your employment with Integrity Hair Group as of today”.

I should parenthetically note that the comment about the “client’s hair” was corroborated in a written statement signed by a co-worker, Ms. Jane Hansen. Ms. Hansen, although acknowledging that Adams was a talented stylist, referred to him as “the most unprofessional person that I have worked with in my 34 years of employment”.

In addition to the foregoing, I have before me a written statement, dated January 9th, 1999, from the employer’s “Salon Manager”, Ms. Judy Lopushinsky, which contains the following assertions:

- “I personally warned Terry many times about being late for work”;
- that Adams on at least one occasion referred to the female staff as “bitches”
- that Adams told an elderly woman who was distraught about her hair colour treatment that she should leave the salon and not come back;
- that Adams repeatedly smoked in the salon bathroom, contrary to employer work rules;
- that Adams removed salon products from the salon without permission;
- that Adams would frequently leave the salon, for periods of up to 30 minutes, without permission; and
- that Adams on one occasion “borrowed money from the cash register without management permission”.

The foregoing, and in my view, very serious allegations of misconduct, stand uncontroverted by Adams. In a brief (1 1/4 pages) handwritten submission, dated July 7th and delivered to the Tribunal on July 8th, 1999, Adams does not deny any of the specific allegations made against him other than to state, as noted above, that he never signed the April 22nd warning letter. I draw an adverse inference from his failure to specifically address the allegations of misconduct levelled against him. In his covering letter to the Tribunal, dated July 5th, 1999, Adams states that the Determination “is a true and accurate account” of the events in question. Such an admission, in my view, is problematic for Adams since I am of the opinion that the allegations set out in the Determination show that the employer did have lawful cause to terminate Adams’ employment.

In my opinion, any number of the foregoing allegations of misconduct on the part of Adams, standing alone, would constitute just cause for termination. The totality of the allegations clearly constitute just cause. It must be remembered that the employer has never condoned Adams’ misconduct but has consistently implored him to improve his behaviour. I suspect that, as

suggested by Ms. Hansen, the employer was hoping Adams' behaviour would improve as he was a talented stylist. However, his behaviour did not improve and the termination was based, as set out in the employer's termination letter, on the "overall situation", *i.e.*, Adams' continuing failure to curb his inappropriate workplace behaviour.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be cancelled.

**Kenneth Wm. Thornicroft,
Adjudicator
Employment Standards Tribunal**