

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act S.B.C. 1995, C.38

- by -

Brittingham Properties (BC) Ltd.
("Brittingham")

- of a Determination issued by -

The Director of Employment Standards
(The "Director")

ADJUDICATOR: Ralph Sollis

FILE NO: 96/436

DATE OF DECISION: October 25, 1996

DECISION

- (d) by mutual agreement returned to day and afternoon shifts as front desk clerk;
- (e) has been trained and had performed the night audit function on a relief basis;
- (f) rate of pay is \$8.25 per hour, worked four shifts per week as front desk clerk;
- (g) employer met with the complainant in January 12, 1996 to bring to her attention that her attitude towards her work as well as her approach to policy and procedures was of concern and required improvement; would be reviewed again in two weeks;
- (h) at the meeting the employer reduced her shifts from 4 to 3 per week; this was agreed to by the complainant;
- (i) on January 21, 1996 the employer met with the complainant and changed her position to that of night audit clerk.
- (j) the complainant refused and quit on January 21, 1996.

FACTS

Madsen was employed by Brittingham as a desk clerk from December 1, 1993 to January 21, 1996. On January 21, 1996 Lee met with Madsen and advised her that she either improved her work performance as a desk clerk or that she would be put on the graveyard shift as Night Auditor at the same rate of \$8.25 per hour. Madsen objected to the change of job and shift and informed Lee that she could not work on such an arrangement and about 20 minutes later she advised Lee that she was quitting immediately and left the hotel.

I heard the evidence of Lee and by means of a speaker telephone the statement of Susan Lowe ("Lowe"). I also reviewed the submission of Madsen consisting of Complaint and Information form and a letter from Dr. Wayne Demott.

It is Madsen's position that Brittingham was aware, from the meeting with Lowe on January 12, 1996 that she could not work on the graveyard shift due to her medical condition. Additionally, she offered to obtain a letter from her physician attesting to this fact but was advised that it was unnecessary. Lastly, when she was informed by Lee in January 21, 1996 that she was being put on the graveyard night audit position, her days per week were reduced from 3 to 2.

O'Byrne argued that the combination of Madsen being assigned a shift she could not work and the further reduction of her hours of work constituted termination of employment by Brittingham under Section 66 of the Act.

The evidence of Lee and Lowe is somewhat at variance with the position taken by Madsen. Lowe states that at the meeting of January 12, 1996 she informed Madsen that they were not satisfied with her attitude and performance and that improvement was necessary. She states that Madsen raised the issue of changing shifts, that is from days, evening and occasionally graveyard and the detrimental effect on her condition and offered to obtain a letter from her doctor, concerning this matter. Lowe says that she informed Madsen a letter was unnecessary and that the hotel would strive to avoid flipping her from shift to shift.

Lee testified that she was fully aware from Lowe that Madsen could not be flipped from shift to shift when she met with Madsen on January 21, 1996. At the meeting she sought a commitment from Madsen that she would improve her attitude and performance but when Madsen was unable to give the assurance she had no alternative but to re-assign her to the night audit position. Lee explained that the night audit position has very little contact with the clientele and is mostly involved in preparing financial documents. Lee states that Madsen protested this change of jobs and shifts and the effect on her medical condition. Lee assure Madsen that there would be no further changes, nor flipping from shift to shift and hence should not aggravate her medical condition.

Lastly, Lee testified that she offered the night audit position for 5 or less shifts per week and it was left to Madsen as to the amount of days she wished to work.

ANALYSIS

The threshold issue in this case is whether the actions of Brittingham in changing Madsen's job from desk clerk/occasional night audit to solely night auditor constituted a substantial alteration in Madsen's condition of employment and hence termination of employment.

Brittingham was faced with an employee with poor attitude and declining job performance. They didn't wish to terminate the employee based on her length of service and previous satisfactory job performance. In fact for several months in 1995 Madsen held a management position.

They did seek a commitment from the employee for improvement and when this failed sought to isolate the employee from the clientele through the change of position and shift. If the employer had been aware that Madsen could not work the graveyard shift then such a change may have constituted a substantial alteration in her condition of employment and termination of employment. In the present case I am not convinced that was the case.

I believe that the employer was aware that Madsen could not be flipped from shift to shift but genuinely believed that assigning her to the graveyard shift would not be harmful to her medical condition.

The change from desk clerk to night audit does not in my opinion constitute a substantial alternative in the conditions of employment. I believe that the employer offered the employee reasonable alternative employment and that Madsen refused to accept the change and terminated her own employment.

ORDER

Pursuant to Section 115 of the Act, I order that Determination #CDET 003081, dated July 8, 1996 be cancelled.

Ralph Sollis
Adjudicator
Employment Standards Tribunal