

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 -

Glen W. Phillips
("Phillips" or "employee")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Paul E. Love

FILE No.: 2000/238

DATE OF DECISION: August 8, 2000

DECISION

OVERVIEW

This is an appeal by Glen W. Phillips (“Phillips”) of a Determination, dated March 10, 2000. The Delegate found that the employee was not entitled to a family responsibility leave pursuant to s. 52 of the *Act*, as the employee failed to provide adequate particulars in order for the employer to determine that the leave request was a family responsibility leave. The employee absented himself from the workplace. The employee received a written warning after he returned from the leave.

ISSUE TO BE DECIDED

Did the Delegate err in finding that the employee must advance sufficient particulars for the employer to determine whether the leave request qualifies as family responsibility leave, or is it sufficient for an employee to assert that he claims a family responsibility leave?

FACTS

Glen W. Phillips is an employee at a pulp mill near Castlegar, British Columbia. The employer is KPMG INC, in its capacity as trustee of The Estate of Stone Venepal (Celgar) Pulp Minc., In Bankruptcy. On November 25, 1999 Mr. Phillips applied for a family responsibility leave on a written application that is made available for this purpose by the employer. Mr. Phillips indicated that the reason for the request was for the health and care of a family member. Mr. Phillips declined to provide any further information concerning the leave. The request for the leave was denied by the employer. Mr. Phillips took the leave on December 1, 1999. On December 3, 1999 Mr. Phillips received a written warning as discipline.

Mr. Phillips filed a complaint with the Director of Employment Standards claiming that he was denied family responsibility leave. The Delegate found that Mr. Phillips was not denied family responsibility leave, as he failed to adduce sufficient particulars for the employer to decide whether the leave request qualified as a family responsibility leave. He appealed this decision to the Tribunal.

On the day Mr. Phillips took the leave, he attended with his wife at a hospital where she had an operation. The employee says that he did not give the employer particulars, as the employer had a duty to grant the leave, it was a leave without pay, there were issues of privacy, and on previous occasions the employer attempted to talk him out of the leave or persuade him to change the date requested.

The notes of the union representative, Brett Martini state that Mr. Phillips informed his foreman that he required a family leave day. The foreman informed Mr. Phillips that he needed to know whom he required the leave for and why in so far as it related to care, health or education. Mr. Phillips declined to give specifics, and filled out a leave form, describing the leave as a family responsibility leave, and the reason for the request as for the health and care of a family

member. The leave was denied and the employee was informed the leave was denied as the company needed to know who the leave was for and a rough reason as to why (health, care or education). The foreman agrees that the notes made by the union representative were accurate.

ANALYSIS

The issue in this case is a simple and narrow issue. Mr. Phillips took a leave which would qualify as a family responsibility leave. He did not provide the employer with any particulars of his absence.

In the decision of *Daledba as Windsor Holdings*, BC EST#D495/97 (Thornicroft), the panel on reconsideration, held that as a minimum employment standard, family responsibility leave cannot be denied by the employer at its discretion. It is clear from a review of the facts in this case that the employee, who was terminated as a result of taking a leave, disclosed to the employer that the reason she required the leave was to attend and assist her daughter, and the birth of her grandchild. This is a type of leave which clearly qualifies as a family responsibility leave.

In this case, the employer denied the leave because of the refusal of Mr. Phillips to give particulars concerning the leave. He now says that he refused to give the particulars because he wishes to preserve his and his wife's privacy, and is outraged that his integrity was impugned by the employer in failing to grant the leave.

Section 52 of the Act provides that an employee is entitled to up to 5 days of unpaid leave during each employment year to meet responsibilities related to care or health of any member of the employee's immediate family, or for the care, health or education of a child in the employee's care. An employer is required to give the leave to an employee who requests the leave under this Part of the Act (section 54).

There are very few requirements in the Act concerning family responsibility leave. There is a limit of 5 days per year. The leave can only be taken with respect to the immediate family or members of the household. The leave must also be for a specified purpose of care or health or in the case of children also for education. In order for the employer to be obliged to grant the leave, however, the employee is required to show that it is "the leave to which the employee is entitled". If an employee fails to adduce sufficient particulars for an employer to ascertain that the employee is entitled to the leave, the employer may refuse the leave.

An employer need not rely on the assertion of the employee that he is entitled to the leave. The employee must provide information to the employer so that the employer can see that the leave is in respect of a spouse, child, parent, guardian, sibling, grandchild or grandparent of an employee, and any person who lives with an employee as a member of the child. At minimum, the employee must disclose to the employer:

- (a) the identity of the person, and the relationship of the person to the employee if this is not apparent, for whom leave is sought;
- (b) that an absence is required for the care, health, of a family member or the care, health or education of a child.

In order to satisfy the provisions, all that was required was that Mr. Phillips identify that he required a leave to accompany his wife for a visit to a medical practitioner. Mr. Phillips was not required to disclose the nature of the visit or procedure his wife was undergoing. There was no need for him to justify his presence at the appointment to the employer. There was no need to give written notice, however, written notice might be helpful because the burden would be on the employee to prove that leave was requested. There was no need to give lengthy notice to the employer. This section contemplates emergency absences. One would hope, however, that an employee would give as much notice as practicable given that absences can cause scheduling difficulties for an employer.

It is not sufficient for an employee to merely assert that he is entitled to the absence. The statute clearly indicates that an employer must grant a leave under the part, but an employee must also offer some proof that the leave requested is a leave under the part.

As a matter of law, an employee may be disciplined for an absence without leave. In the absence of a statutory provision set out in the *Act*, a collective agreement right, or other contractual right for non-union employees, an employer is not required to grant a leave of absence to an employee merely because the employee wishes time off. Section 52, alters the common law with regard to the right of the employer to manage its workforce. Given that an employer must grant a leave under s. 52, the employee has a reciprocal duty to show that in fact he is requesting a leave under s. 52, and the leave in fact qualifies as a leave under s. 52 of the *Act*.

ORDER

Pursuant to section 115 of the *Act*, I confirm the Determination dated March 10, 2000.

PAUL E. LOVE

**Paul E. Love
Adjudicator
Employment Standards Tribunal**