

An appeal

- by -

James Jenkins
("Jenkins")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: April D. Katz

FILE No.: 2002/203

DATE OF HEARING: June 25, 2002

DATE OF DECISION: July 15, 2002

DECISION

APPEARANCES:

| | |
|---------------|---------------------------------------------------|
| James Jenkins | on his own behalf |
| Russ Hepworth | on behalf of Tech Mechanical Systems Ltd. |
| David Oliver | on behalf of the Director of Employment Standards |

OVERVIEW

Tech Mechanical Systems Ltd. ('Tech') employed James Jenkins ('Jenkins') as a bookkeeper from August 1991 until April 2, 2001. Jenkins' employment was terminated and he complained to the Director of Employment Standards ('Director') that he was not paid compensation for length of service. Tech provided evidence of 'just cause' for ending the employment and Jenkins disputed the claim of just cause. The Determination issued on March 20, 2002 found there was cause for terminating Jenkins employment and Jenkins appealed.

ISSUE

1. Has Jenkins provided new evidence, which would support canceling the finding of just cause to end his employment in the Determination?

ARGUMENT

Jenkins argued that Tech did not have just cause to terminate his employment and that his call to a bonding company was justified because his position put him in charge of accounts payable. The account was unpaid and therefore it was reasonable for him to call and inquire if the bill should be paid. He submitted that he was a hard working employee and that Tech had planned not pay him for length of service. He also submitted that Director's delegate interrogated him about why he had called the insurer and appeared biased against him.

Tech argued that they had had warned Jenkins about his inappropriate manner with other people and his phoning over a period of years. Tech supplied copies of letters censoring Jenkins for his telephone manners and directing him to change is telephone manner and not to phone suppliers because of earlier instances of problems in his representing the company's interests.

Tech argued that in the culminating incident, Jenkins knew that Tech had a cash flow problem. Jenkins elected to call the bonding company to ask if they needed their bill paid without management's knowledge or authority. Tech did not know Jenkins had done this in the past and did not approve of Jenkins contacting anyone Tech owed.

Tech argued that the company was fortunate that Jenkins approached a person who was a friend of Tech's or they could have lost their ability to bid on new contracts, which would have been devastating to the business. The call was prejudicial to Tech's interests and could have caused serious harm to Tech's

ability to continue in operation. Tech argued that this was not the first time Jenkins motivations towards Tech's interests had been questioned.

The Director's Delegate submits that there was no evidence to support the claim of bias. The Delegate submitted that there was no evidence raised in the appeal to support a variation or cancellation of the Determination and that it should be dismissed.

FACTS

Jenkins was a bookkeeper with Tech for almost 10 years. He worked part time and was responsible for accounts payable. In late March 2001 Jenkins phoned Merit Insurance, Tech's bonding insurance company and asked if their invoice needed to be paid. When he was told it was not necessary that it be paid immediately, Jenkins persisted to be sure that it was not necessary to pay the amount owing and was told that it need not be paid at that time.

Jenkins had brought the insurance bill to Tech management's attention repeatedly and been directed not to pay it. Tech management had an arrangement with the bonding company to delay payment but Jenkins did not ask about any arrangement within Tech management before making his call. The person Jenkins spoke to was a personal friend of Tech's president. The representative of the bonding company was so upset about the style of Jenkins' call he insisted on an early meeting with Tech's president. He told Tech's president that if someone else had dealt with Jenkins Tech could have lost their bonding.

Jenkins tone left the Merit representative with the impression that Jenkins was not interested in acting in Tech's best interests. After meeting with Merit's representative, the president of Tech called Jenkins in and terminated his employment.

Jenkins complained to the Director claiming length of service compensation.

ANALYSIS

In an appeal to the Tribunal the evidentiary burden is on the appellant to show that the Director's Determination erred. In this instance the onus is on Jenkins to provide evidence to support a variation or cancellation of the Determination.

The parties do not dispute Jenkins length of service or salary. The sole issue before the Director's Delegate was whether Jenkins' conduct provided just cause to end his employment. If just cause exists then it is completely at the employer's discretion to end the employee's employment or not. The sole issue for the Director was to assess whether just cause existed.

The Tribunal has concluded in situations where there is deliberate and intentional misconduct 'just cause' can exist as a result of a single act. Where the act is willful and deliberate and is inconsistent with the continuation of the contract of employment or inconsistent with the proper discharge of the employee's duties, prejudicial to the employer's interests, in breach of trust, or is such as to repudiate the employment relationship just cause exists. In these cases there is no requirement for a warning prior to ending employment.

The Delegate found that Jenkins conduct was willful and deliberate and potentially prejudicial to Tech's interests. Tech trusted Jenkins with information about its financial affairs. Jenkins acted inconsistently with Tech's financial interests by potentially precipitating a financial obligation Tech could not easily afford. The Delegate found the relationship with the bonding insurance company was important to the survival of the company and Jenkins conduct threatened the relationship. Jenkins' conduct was a repudiation of the duty of faithfulness of an employee to his employer. The Delegate found there was just cause to end Jenkins' employment.

Jenkins argued that the Delegate was not reasonable. By way of example he cited the fact that the Delegate repeatedly asked why Jenkins called the insurance company. He also indicated he had left two messages, which were not returned until a Saturday, when the Delegate did not leave a message. In the Determination the Delegate states that Jenkins' reason for making the call was not convincing. I find that the repeated questioning was consistent with the Delegate trying to help Jenkins find a good reason for making the call. When I asked Jenkins if he had called the insurer before, he replied that he had on more than one occasion. When I asked if the bill had needed to be paid before he replied that it had not. I, too, could not find a justification for placing this call when money to pay this bill was in short supply.

I find that the diligence of the Delegate in working on a weekend is not a fault of the investigation. The only reason Jenkins knew of the call was because he has call display. Without call display he would not have known the Delegate called.

CONCLUSION

Based on the evidence before me there is no evidence to support the appeal. The Determination is therefore confirmed.

ORDER

Pursuant to section 115 of the Act, I order that the Determination in this matter, dated March 20, 2002 be confirmed.

April D. Katz
Adjudicator
Employment Standards Tribunal