

**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 -

Ms. Rhonda Bennett  
("Bennett")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Richard S. Longpre  
**FILE NO.:** 1999/178  
**DATE OF HEARING:** July 5, 1999  
**DATE OF DECISION:** July 23, 1999

**DECISION**

**APPEARANCES**

Jane Ramsbotham	On Behalf of Rhonda Bennett
Rhonda Bennett	On Her Own Behalf
Barb Evans	On Behalf Of Rhonda Bennett
Leslie Green	On Behalf Of Consumer Direct Contact Ltd.

**OVERVIEW**

This is an appeal by Rhonda Bennett pursuant to Section 112 of the Employment Standards Act seeking review of a Determination, dated March 4, 1999, issued by a delegate of the Director of Employment Standards. The Determination addressed two issues raised in Bennett's complaint. First, whether Bennett's last pay cheque with the Consumer Direct Contact Ltd. ("CDC") compensated her for all hours worked. Second, whether Bennett was terminated for just cause. The Determination reads:

Bennett has not provided sufficient evidence to show what hours she worked for CDC during the period in question. As a result, it is impossible to determine what wages are owed for that period.

Green had just cause to terminate Bennett due to Bennett's walking out of the meeting and refusal to agree to meet as Green requested. (pp. 3-4).

**ISSUES TO BE DECIDED**

Was Bennett entitled to full wages for the two weeks of her employment? Did CDC have just cause for terminating Bennett?

During the hearing on July 5, 1999, Bennett requested that additional remedies be considered. In a letter to the delegate, dated February 6, 1998, Bennett sought remedies of "wages, severance and interest." In her appeal, dated March 23, 1999, made the same request. I did not accept her request to expand the scope of remedies during the appeal hearing.

**FACTS**

CDC was started by Leslie Green in Vancouver, B.C. Green moved to Toronto to expand the business in that area. Bennett was left to run the Vancouver office. The evidence established that before June 1996, Bennett performed her duties and responsibilities very well. After that point in time, Green began to have concerns about her work.

Green raised her concerns with Bennett over the telephone on several occasions. From memos between the Green and Bennett, it is obvious that Green had concerns about

Bennett's reporting. On September 24, 1996, Green wrote Bennett. The letter clearly put Bennett on notice of conduct she must not repeat and duties she must ensure she completed.

Problems continued and on October 3, 1996, Green came out from Toronto to meet with Bennett. I have no doubt that Bennett knew Green's purpose of the meeting as well as the nature of the discussions. The meeting was held in a restaurant. During the course of the meeting, Bennett became upset and left. That evening Green sent Bennett a fax setting out in some detail the issues she wanted to discuss with Bennett the following day. The letter instructed Bennett to call Green at 9:00 a.m.

Green's faxed letter can be divided into two parts. First, a four and a half page hand written letter setting out the circumstances Bennett was in and the issues Green wanted to discuss with her. The letter concluded:

I want you to take responsibility not only for what you have done right, but also for what you have done wrong.

If we can come to a resolution to my satisfaction of how CDC Vancouver will be managed in the future, then I would like you to continue with CDC.

The second part of the letter contained some of the memos Bennett had already received from Green. It also contained Green's hand written notes of discussions she had had with Bennett in the past. Green had to meet with Bennett on October 4 as she was scheduled to return to Toronto that evening. Bennett was aware of her time schedule.

Bennett decided not to read the faxed letter on the evening of October 3. She started reading the letter on October 4 at around 8:30 a.m. She had not read the entire letter when she called Green at 9:00 a.m. In their conversation, Bennett told Green that she had work to do that day, including meeting with a client, and that she would not be available until later. She wanted more time to review the content of the letter.

Green testified that she told Bennett that she would perform Bennett's duties and that Bennett should immediately address the issues in the letter. From Bennett's response, Green understood that Bennett was refusing to do as instructed. As the conversation continued, she thought that Bennett had quit.

Bennett testified that Green said that she did not have any more meetings. Bennett asked if she was fired. Bennett testified that Green said yes. Both agreed the conversation degenerated from there.

I turn now to Bennett's final pay cheque. Bennett worked from her own home. She worked quite independently. Each month she submitted payroll accounts for herself and other employees of CDC. Based on the amount of work she thought Bennett was performing, Green questioned whether she was working a full day. Green discussed the matter with other employees of CDC who told Green they thought Bennett was not

working a full day. Green concluded that Bennett was working only half her scheduled time. Bennett's last pay cheque was made out accordingly.

Bennett pointed out, and Green agreed, that her usual work day and work week had varied hours. She also explained that during the time in question, there were at least three areas of the Company's work that drew her attention. She had to be at those areas at various times of the day.

Barb Evans testified on Bennett's behalf. Bennett dealt with Evans through CDC's account with Pacific Press. Evans testified that when she visited various sites CDC had set up on Pacific Press' behalf, Bennett was most often there. She also had no trouble contacting Bennett when she wanted to talk to her. Evans explained that Bennett was virtually the sole CDC representative of CDC to Pacific Press. Pacific Press cancelled its account with CDC when Bennett was terminated.

## **ANALYSIS**

I will deal first with the delegate's determination that there was just cause for Bennett's termination. Bennett's counsel referred to the Tribunal's decision in *Kenneth Kruger* EST No. D003/97. The decision set out the standard to be met:

1. A reasonable standard of performance was established and communicated to the employee.
2. The employee was given a sufficient period of time to meet the required standard of performance and had demonstrated they were unwilling to do so;
3. The employee was adequately notified their employment was in jeopardy by continuing failure to meet the standard; and
4. The employee continued to be unwilling to meet the standard.

The Tribunal's decision went on to note that in exceptional circumstances, a single act may sufficient to justify summary dismissal. Counsel for Bennett referred to decisions of the court that reinforce these criteria.

The delegate based her decisions on the following finds of fact:

....just cause to terminate Bennett is based only on performance issue outlined in the fax of October 3, 1996 and the circumstances of the meeting that day and the failure to agree to meet the following day. (p.3)

The evidence at the hearing supported the delegate's finding. Bennett knew the situation she was in prior to the meeting on October 3. Her consistent denial of that understanding at the hearing did not assist her appeal. Bennett received the letter by fax the evening of October 3. She knew Green wanted to talk to her at 9:00 a.m. on October 4. She knew Green was returning to Toronto later in the day. Bennett decided not to read the letter and get prepared for the meeting the following day. She waited until the following

morning and made no effort to read it before calling Green. Further, little (if any) content in the letter would have been a surprise to Bennett. Most importantly, the letter put Bennett on clear notice:

If we can come to a resolution to my satisfaction of how CDC Vancouver will be managed in the future, then I would like you to continue with CDC.

Once again, she ignored Green's warning.

Evans testified that Bennett was very competent at representing CDC to Pacific Press. I accept her evidence. However, Bennett's position had a range of duties and responsibilities. After July 1996, Green had problems with her work performance in several areas. She raised those concerns with Bennett on several occasions. Bennett may well have provided reasoned explanations for at least some of those areas. The delegate concluded that Bennett refused to agree to meet with Green as requested. I agree with that conclusion. The test in *Kenneth Kruger*, when applied to the unique circumstances of this case, was met.

I turn now to the delegate's decision concerning the hours worked by Bennett between September 24, 1996 and October 4, 1996. I accept the delegate's finding that Bennett did not provide sufficient evidence to show the hours that she worked. The evidence showed, however, that Bennett had never been required to keep a formal record of time worked. The evidence showed that Bennett would work at her home as well as a variety of locations. In these circumstances, Green's vague concerns and comments from other employees are not sufficient to conclude that Bennett was not continuing to work a full work week.

**ORDER**

Pursuant to Section 115 of the Employment Standards Act, the delegate's conclusion that CDC had just cause to terminate Bennett is confirmed. Accordingly, the delegate's decision in the Determination dated March 4, 1999 that Bennett was not owed wages between September 24, 1996 and October 4, 1996 is varied to show that Bennett is owed \$880.00 plus interest from October 4, 1996.

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**Richard S. Longpre**  
**Adjudicator**  
**Employment Standards Tribunal**