

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 -

Codfather's Fish and Chips Ltd.
("Codfather's")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE NO.: 96/450

DATE OF HEARING: October 28, 1996

DATE OF DECISION: November 12, 1996

DECISION

OVERVIEW

The appeal is by Codfather's Fish and Chips Ltd. ("Codfather's") pursuant to section 112 of the *Employment Standards Act* (the "Act") against Determination No. CDET 003327 of the Director of Employment Standards (the "Director"), a decision dated July 12, 1996. In that Determination Heather Hazard is found to be owed compensation for length of service plus vacation pay and interest, an amount totalling \$645.72.

Codfather's has appealed the Determination alleging theft and just cause for the termination as a result.

APPEARANCES

Walter Ceron	Owner of Codfather's Fish & Chips
Susan Tipple	Witness for Codfather's
Marlene Vermette	Witness for Codfather's
Jennifer VanderEnde	Witness for Codfather's
Theresa Robertson	For the Director

FACTS

Heather Hazard was employed by Codfather's from February 28, 1995 to February 13, 1996, as a cook.

The Director's delegate was able to settle claims for overtime and statutory holiday pay but found the employer uncooperative in respect to the matter of Hazard's termination, which was said to be have been for the theft of food stocks. Hazard denied that anything was taken. The Director's delegate on finding no compelling evidence of theft, awarded Hazard two weeks' compensation for length of service.

The appeal argues that Codfather's had just cause for reason of theft.

According to Walter Ceron, owner of Codfather's, he arrived for work one morning and to his surprise, the back door of his shop was locked, contrary to normal practice. He unlocked the door and on entering, it is his testimony, he saw Hazard's boyfriend, Doug, go out the front door with a clear bag containing groceries. According to Ceron, he then realised that several of the bags in which food stores are kept were out along with a tub of garlic. It shouldn't have been out at such an hour he says. Ceron then accused Hazard of stealing from his shop.

Hazard initially denied that anything had been taken. According to Ceron, she told him that Doug liked garlic with his coffee, that was why it was out. Not satisfied with her answer, he persisted with his accusation and Ceron testifies that Hazard then said, "So I stole a couple of carrots", or words to that effect. Certain that more than a couple of carrots had been stolen, Ceron told her to go home and that he would talk to her later but matters did not end there. The exchange continued with Hazard asking over and over, "Am I fired?".

During the course of this rather heated exchange, the manager of Codfather's arrived, Susan Tipple. It is her testimony that she heard Hazard admit to stealing carrots. She testifies that Hazard kept asking if she was fired over and over, and that it was her idea to ask Hazard for her set of keys and that she did so for reasons of security. On being asked whether she got along with Hazard, Tipple answered in the affirmative but said that she thought that Hazard had become a different person on meeting Doug and that she had been very moody in the last few weeks of her employment.

An inventory of food stocks was conducted. It is the testimony of Ceron that an inventory had been done a week and a half earlier and that between \$30 and \$40 worth of food supplies were missing.

Marlene Vermette was employed by Codfather's at the time of Hazard's leaving. She was not in the shop at the time of the exchange between Ceron and Hazard. She testifies that Hazard telephoned her so that she could explain what had happened. It is the testimony of Vermette that Hazard said she took a few carrots and that she did it in order to get fired.

Jennifer VanderEnde was also an employee of Codfather's and she too received a telephone call from Hazard. It is her testimony that Hazard told her that what was in the bag was just an orange coloured newspaper. She also says that Hazard was moody and talked of getting fired.

ISSUE TO BE DECIDED

The issue is, Did Codfather's have just cause in terminating Hazard?

ANALYSIS

The evidence that is before me is not the same as the evidence put before the Director's delegate. Hazard has chosen not to present me with her side of matters. And Ceron for reasons not understood, chose not to co-operate with the officer as she went about investigating Hazard's complaint and now presents evidence through witnesses which is new.

Theft is one of the gravest, if not the gravest, breach of the employment relationship. Traditionally it has been found to be justification for an employee's discharge although much less so in recent years. The rationale for the traditional view was eloquently expressed by George Adams, then chairman of the Ontario Labour Relations Board, in *Phillips Cables Ltd.* [1974], 6 LAC (2d) 35. While he had the setting of the industrial plant in mind, his comments are no less appropriate in the case of a shop like Codfather's. He said,

“ . . . in a very general sense, honesty is a touchstone to viable employer-employee relationships. If employees must be constantly watched to insure that valuable tools, material and equipment are not stolen, the industrial enterprise will soon be operated on the model of a penal institution. In other words, employee good faith and honesty is one important ingredient to both industrial democracy and the fostering of a more co-operative labour relations climate.

The board feels that these are the sentiments underlying the arbitral castigation of dishonest conduct. Arbitrators are not equating the role of a plant to that of a church. Rather, they are insuring that the role of the plant will not evolve into a role resembling that of a penal institution.

Theft is not now automatically accepted as justifying discharge, lesser penalties are often deemed appropriate. The reasons are numerous and varied but include the circumstances, the value of the goods taken, a long exemplary employment record, where the theft is irrational, on the spur of the moment or perceived as an isolated incident, and where guilt is admitted and/or there is an expression of remorse, to list but a few.

In this case Hazard has admitted to taking a portion of Codfather's food stocks. I accept that on the basis of testimony by witnesses Tipple and Vermette, they are credible on all points. But was the theft such that Codfather's had just cause to terminate Hazard? After careful consideration of the evidence before me, it is my conclusion that the answer to that question is, yes it did. I am satisfied that the theft was of a substantial nature, Hazard was merely employing a euphemism in saying a couple of carrots were taken. And while there was an admission of guilt of a sort, there is no evidence of any expression of remorse, indeed the evidence indicates defiance on the part of Hazard, the employee repeatedly asking as she did, if she was fired. I am satisfied that her conduct on the 13th left the employment relationship damaged beyond repair and that Codfather's had just cause for dismissal. As is set out in section 63 (3) (b) of the *Act*, the liability for compensation for length of service is discharged where the employer has just cause.

Given evidence not presented to the Director's delegate, I find that the Determination should be cancelled.

ORDER

I order, pursuant to Section 115 of the *Act*, that Determination # CDET 003327 be cancelled.

Lorne D. Collingwood
Adjudicator

Employment Standards Tribunal

LDC:jel