

**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-

Columbia Copy Centre Ltd.

(the “employer”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 98/336

**DATE OF DECISION:** August 11, 1998

## DECISION

### OVERVIEW

This is an appeal brought by Columbia Copy Centre Ltd. (the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on May 7th, 1998 under file number 070731 (the “Determination”).

The Director determined that Columbia owed its former employee, Stuart Bell (“Bell”), the sum of \$919.07 on account of two weeks’ wages as compensation for length of service payable pursuant to section 63 of the *Act*.

### ISSUE TO BE DECIDED

The employer admits having terminated Bell’s employment on or about November 12th, 1997 but maintains that it had just cause to do so and, thus, was not obliged to pay Bell any termination pay by reason of section 63(3)(c) of the *Act*.

### FACTS AND ANALYSIS

In a memorandum appended to the employer’s appeal form, Mr. Bill Wolowich, the employer’s principal, essentially reiterated the allegations that he made--and which were rejected by the Director’s delegate--during the course of the investigation of Bell’s complaint.

Certain facts are not in dispute. Bell’s employment commenced on July 25th, 1996; he worked 8 hours per day, 5 days per week at an hourly wage of \$10.75. The event precipitating Bell’s termination appears to have occurred on November 10th, 1997 when Bell did not report for work. Bell apparently told the Director’s delegate that he was ill (the Determination states, at page 2, “Mr. Bell did take the 10th off because he was ill”); the employer says that Bell was away on Vancouver Island visiting his mother who was celebrating a birthday. According to Bell, he telephoned a co-worker at another store on Friday, November 7th to advise that he would not be reporting for work on the following Monday, November 10th.

There does seem to be some inconsistency in Bell’s evidence regarding the reason for his being away on November 10th--he apparently originally told the delegate that he was away due to illness but in a letter dated June 10th, 1998 addressed to the Tribunal, Bell stated that “I did take Nov. 10/97 off to go and visit my mother for her birthday. I never said I was going to be sick that day.”

According to Mr. Wolowich’s written statement dated December 10th, 1997 which was provided to the delegate, Wolowich was away from work on vacation from November 3rd (departure) to November 12th (return) and thus it would appear that Bell would not have been able to secure

Wolowich's prior approval for the November 10th absence--which, according to the employer's own documents, was an absence *with notice*. However, even if the absence could be characterized as an absence without leave, a single unjustified absence over some 18 months of employment does not give an employer just cause for termination.

The employer also alleges theft on the part of the employee--this allegation is purely speculative (and arguably defamatory) given that there is not a shred of reliable evidence before me to prove the allegation.

Finally, the employer says that Bell's "work habits [were] a problem and [Bell] was asked to rectify the situation but he never did". This appears to be an entirely new allegation raised only after Bell's complaint alleging unjust dismissal was upheld. For example, Bell's alleged ongoing performance problems are not mentioned in Mr. Wolowich's December 10th, 1997 letter provided to the delegate.

In my view, the documents submitted by the employer to the Tribunal in support of its position that Bell was dismissed due to ongoing performance problems are not admissible--see, among other cases, *Kaiser Stables Ltd.* (B.C.E.S.T. Decision No. D058/97). One has to wonder why the "Employee Evaluation & Performance Review" documents, if so very relevant, were never produced for the delegate's consideration during the investigation. It should perhaps also be noted that Bell maintains that he never received such documents and there is no evidence before me that the employer did provide these documents to Bell--say, an "acknowledgement of receipt" signed by Bell.

In any event, even if the documents are admissible, the evidence before me falls very far short of establishing cause based on poor performance. There is no evidence before me that the employer ever discussed Bell's performance deficiencies with him or that he was formally warned that his job was in jeopardy. Bell denies having ever received any written "evaluation" reports and there is no evidence before me to suggest anything to the contrary. The fact that Bell received four pay raises during his tenure suggests that his performance could not have been all that unsatisfactory. Further, the evidence of Bell's former supervisor suggests that, if anything, Bell's performance was quite satisfactory--she described him as a "reliable and honest employee".

## **ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$919.07** together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

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**Kenneth Wm. Thornicroft, Adjudicator**  
**Employment Standards Tribunal**