

An appeal

- by -

Kim Nancy Dennis operating as Custommaids House Cleaning Services
("Dennis")

- 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: Mark Thompson

FILE No.: 2002/167

DATE OF HEARING: June 17, 2002

DATE OF DECISION: August 7, 2002

DECISION

APPEARANCES:

Kim Dennis

For herself

OVERVIEW

This is an appeal by Kim Dennis, dba CustomMaids House Cleaning Service (“Dennis) pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) against a Determination issued by a delegate of the Director of Employment Standards on March 12, 2002. The Determination found that Tamara Miller (“Miller”) was entitled to compensation for length of service in the amount of \$641.60, including interest, after Dennis terminated her employment as a maid on August 14, 2001. Dennis discharged Miller for disobedience of a company policy regarding the movement of furniture. Miller allegedly moved a couch in Dennis’s home causing the death of a cat, a Dennis family pet. Miller stated that she had followed previous instructions about moving furniture. The Director’s delegate found that Miller had not willfully caused the death of the family pet. Although she may have failed to follow company policy, she had not been given the opportunity to correct her behaviour, so Dennis did not have just cause to terminate Miller.

Dennis argued in her appeal that Miller was aware of the company policy, and her action of moving a couch constituted a serious breach of that policy and thus was grounds for termination with cause.

The Registrar of the Tribunal ordered that the case should be decided on the basis of an oral hearing. Miller and the Director’s delegate gave advance notice that they would not attend the hearing.

ISSUE TO BE DECIDED

The issue to be decided in this case is whether Miller was terminated from her employment without cause.

FACTS

Dennis employed Miller as a maid from September 24, 1998 until August 14, 2001. Dennis operates a housecleaning service for individual clients in their homes. From time to time, Dennis sent maids to her own home to perform cleaning services. On August 13, 2001, Miller and another maid were sent to the Dennis residence to perform normal cleaning services. According to Dennis, she left a note for Miller, who was the head maid that day, with a list of tasks to be performed. She also included instructions regarding her dogs and two cats while Miller and the other maid were cleaning. Dennis stated that she told Miller to ensure that the cats did not leave the kitchen area.

In her statement to the Tribunal, Miller stated that she had “flipped” a large couch in the family room of the Dennis residence, i.e. tipped it on to its arms so the other maid could clean underneath. As Miller moved the couch, one of the family cats jumped out of a cavity in the underside of the couch and hissed at her. After the other maid finished cleaning the area, Miller tipped the couch back onto its legs. Subsequently, Dennis found that her cat had been trapped under the couch and killed when it was lowered to the floor.

After verifying the circumstances of her cat's death Dennis terminated Miller the following day. Although the record is not clear, it appears that she also terminated the other maid who worked with Miller on August 13. The Tribunal did not receive any evidence of a complaint by the other maid.

The major conflict of evidence between Dennis and Miller is the instructions Dennis gave regarding the movement of furniture. Throughout the proceeding, Miller maintained that, although general company policy may have been that maids should not flip furniture, she had never been told not to flip furniture. She provided statements from former employees of the company to support her argument that she had never been told not to flip furniture. Moreover, Dennis had given her explicit instructions to flip the couch in question. Miller described a meeting with Dennis and her husband in the Dennis home one morning at which Dennis told her to turn the couch over. During the investigation, Miller told the delegate that she was aware of the company policy about moving heavy furniture, but relied on specific instructions from Dennis for her own home.

Dennis strenuously denied making any exception to company policy concerning the treatment of furniture for her own house. According to Dennis, company policy was strict. Furniture should not be turned over, and all employees were informed of this policy. The policy was intended to prevent back or shoulder injuries by the staff that would result in Workers' Compensation claims, as well as averting accidental damage to lamps or other objects that might be placed near large pieces of furniture. Dennis provided extracts from a company manual stating that vacuuming under large items of furniture should be done without moving the furniture. Another part of the company policy instructed maids to check on any animals that might be in the client's home. Dennis also presented statements from former employees confirming the training they had received about moving furniture and keeping track of pets in homes.

Both Miller and Dennis also presented evidence about Miller's past performance, the presence of Dennis's daughter in the home during the events in question, and the possible impact of her continued employment on the reputation of the employer. In light of the outcome of this decision, it is not necessary to review this evidence. Miller also speculated that the cat's death could have been caused by the couch reclining after she left the Dennis home. However, she did not present any evidence to support this position.

ANALYSIS

This case aroused considerable emotion because of the accidental death of a family pet. Dennis acknowledged that she was very upset because of the circumstances under which her cat died and sold the couch in question because of its association with this accident. The delegate correctly argued that the case should be decided according to the relevant legal principles governing termination of employment.

On several points, the evidence of Miller and Dennis differed. Because Dennis appeared at the hearing and testified in a forthright manner, her version of events should be preferred to that of Miller where the two conflict. The Registrar informed both parties in her notice of the hearing that I would not have the benefit of the Respondent's (i.e. Miller's) perspective if she did not appear. In addition, Miller's description of her own knowledge of the company policy about moving furniture was inconsistent. I further conclude that it would be illogical for Dennis to instruct Miller to violate company policy with respect to her own couch, which all parties described as large and heavy.

Section 63 of the *Act* sets out employers' liability for compensation for length of service as follows:

- (3) The liability is deemed to be discharged if the employer
 - (a) is given written notice of termination as follows:
 - (i) one week's notice after 3 consecutive months of employment;
 - (b) is given a combination of notice and money equivalent to the amount the employer is liable to pay, or
 - (c) terminates the employment, retires from employment, or is dismissed for just cause.

The Tribunal has identified two categories of circumstances under which an employee may be terminated for cause: acts of serious misconduct and minor infractions of employment rules or unsatisfactory job performance (*Pacific Coast Fire Equipment (1976) Ltd.* BC EST #D313/01. Either circumstance may relieve the employer of any liability for compensation for length of service.

In cases of serious misconduct, the Tribunal has found that just cause can exist as a result of a single act which is willful and deliberate, is inconsistent with continuation of the employment relationship, is inconsistent with the proper performance of the employee's duties, is prejudicial to the employer's interests or is a significant breach of workplace policy. (*Esquimalt Saanich Taxi Ltd.* BC EST #D203/01; *White Spot Restaurants, A Division of White Spot Limited*, BC EST #D017/98; *Sears Canada Inc.* BC EST #D210/02). In such circumstances, the employer is not required to issue warnings or impose any form of progressive discipline in order to establish just cause for termination.

The alternate principle applies when an employee is guilty of several minor infractions of employment rules or generally unsatisfactory job performance. When these circumstances arise, the employer must show:

1. reasonable standards of performance have been set and communicated to the employee;
2. the employee was notified that continued employment was in jeopardy if such standards were not met;
3. the employee was given a reasonable opportunity to meet such standards; and
4. the employee continued to demonstrate an unwillingness to meet those standards.

(*Pacific Coast Fire Equipment (1976) Ltd.*, *supra*; *White Spot Restaurants*, *supra*).

In this case, Dennis argued in effect that Miller's breach of company rules was so serious that termination was the appropriate penalty. The rules about moving furniture and accounting for pets were established and communicated to employees, including Miller. The rules had a serious and reasonable basis in the company's business. Therefore, Miller's willful disregard of the rule was cause for termination.

The delegate's position was that Miller's misconduct was minor, so that Dennis was required to demonstrate that she had carried out the four steps listed above. Since the evidence indicated that Dennis had not put Miller on notice that her continued employment was at risk prior to her termination, just cause did not exist, and Miller was entitled to compensation for length of service.

After considering the Tribunal's precedents in cases of termination and the evidence before me, I conclude that Miller's actions did constitute just cause for termination and was inconsistent with the continuation of the employment relationship. I find that she was guilty of a serious act of misconduct when she willfully ignored company policy concerning the movement of furniture. Because maids work essentially without direct supervision, adherence to company policy is an important management tool for the employer. Miller received explicit instructions to account for the location of the family pets. Had the accident occurred in a client's residence, I conclude that the employer would have suffered economic loss.

In the legal regime of the *Act*, the Legislature has decided that neither the Tribunal nor the delegate can substitute a lesser disciplinary penalty for termination. Therefore, if an employee commits a serious infraction of a company rule, the Tribunal should grant a degree of deference to the employer's decision to terminate an employee without abandoning the distinction between major and minor infractions outlined above. The offense in this case was sufficiently grave that the Tribunal should not interfere with the employer's decision.

ORDER

For these reasons, I order that the Determination of March 12, 2002 be cancelled, pursuant to Section 115 of the *Act*.

Mark Thompson
Adjudicator
Employment Standards Tribunal