

**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 -

Gordon Douglas Roberts  
( Roberts )

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** John M. Orr

**FILE NO.:** 97/495

**DATE OF DECISION:** August 21, 1997

## DECISION

### OVERVIEW

This is an appeal by Gordon Douglas Roberts (Roberts) pursuant to Section 112 of the *Employment Standards Act* (the "Act") from a Determination of the Director of Employment Standards (the "Director") dated June 10, 1997.

The Determination found that Roberts was dismissed for "just cause" and that the employer's liability for compensation for length of service was deemed to be discharged pursuant to Section 63(3)(c) of the *Act*.

Roberts has appealed and alleges that the Director was in error in finding that there was just cause. Roberts says that he had 10 years of loyal service and points out that it was not until there was a change in ownership that he began to have any trouble in his employment. He disputes the substance of the written warnings he received and claims that the final event was not serious enough to warrant dismissal.

### FACTS

Roberts was employed by the Strathcona Hotel of Victoria Ltd (the Hotel) as a bartender. According to Roberts he worked for the Hotel for 10 years working his way up from a busboy to disc jockey to bartender. He claims that he never had any problems at work until there was an ownership change. He submits a letter of reference dated September 1992 which refers to him as an exceptional employee. Apparently things changed after new owners took over and Roberts claims that there was a lot of favouritism that went on and he makes various complaints about the new owners.

Roberts received the following written warnings:

October 6, 1995	substandard work (health hazards)	
March 2, 1996	carelessness with cash (overage/shortage)	
June 19, 1996	breach of company rule about his charge account	2 prior oral warnings
July 19, 1996	cash problems "Last Warning"	1 prior oral warning
August 29, 1996	cash problems - premise left unlocked 2 days suspension without pay	

Roberts was dismissed on January 5, 1997 when he failed to report for work. Roberts had worked the evening of January 4, 1997 and was scheduled to attend at the Hotel to re-open the Pub for

business at 11:30 am. Sometime after 11:30 am the employer discovered that the Pub was still closed and that Roberts had not shown up for work. Roberts did not telephone or otherwise notify the Hotel that he would be late. Roberts did not phone the Hotel to explain or apologise at all on January 5, 1997. Roberts states that he had gone home the previous night and joined a party that was occurring at his residence. He consumed some liquor, did not go to bed until the early morning, and slept through his shift.

## **ISSUE TO BE DECIDED**

The issue to be decided is whether the Hotel had "just cause" for the dismissal.

## **ANALYSIS**

In the first instance the onus is on the employer, the Hotel, to establish on a balance of probabilities that there existed "just cause" for the termination of employment. Normally in cases of poor or substandard work performance the onus is on the employer to establish that there were reasonable standards of performance set and that the employee knew what the standards were. The employer must also establish that the employee was given a reasonable opportunity to meet the standards.

However, on appeal to this Tribunal the onus is on the appellant to satisfy the Tribunal that the Determination is wrong and should be varied.

Roberts' written submission makes various complaints about the "new owners" of the Hotel in terms of favouritism, unfair raises, and serving themselves or friends after hours. None of these complaints has any direct bearing on whether or not the work performance of the appellant was substandard to the extent that warranted dismissal.

Roberts' other submission is that there was no policy or procedure manual at the Hotel and that therefore the standards expected were not clear and not clearly communicated. Roberts also, at this appeal stage, disputes for the first time the basis for the several warnings which he received. He does not deny that he was warned but submits that the basis for the warnings was incorrect.

Dealing firstly with the "warnings" it is my opinion that it is not open to the employee to dispute the basis of these warnings at the appeal stage. He was given the opportunity to comment on each of the written warning forms and he signed an acknowledgement of each warning without dispute at the time. In addition, the dispute in regards to the substance of the warnings was not raised with the Director at the time of his investigation. Whether or not the warnings were completely justified, it is not disputed that Roberts received 5 written warnings in addition to 3 oral warnings relating to substandard work performance.

For the purpose of this appeal, I accept Roberts' submission that there was no policy or procedure manual in the workplace but there is nothing in Roberts' submission to indicate that he did not know that his work performance was considered to be below a recognised standard on the occasions noted in the written warnings and in regard to the oral warnings. He was warned on July 18, 1996 that there would be no more "warnings" and on August 30, 1996 he was suspended for two days. His submission does not dispute that he received ample notice that his performance was in question and that his employment was in jeopardy.

In regard to the final incident, in which Roberts failed to report to open the employer's premise for business, Roberts states:

" Unfortunately I slept through half my shift, and I will admit I should have called as soon as I woke up, and I do deserve some form of punishment for not phoning however I feel the employer was far too extreme in his action."

Roberts submits that dismissal, under the circumstances, was unjust. However I am not persuaded that the Determination is wrong. Roberts received 5 written warnings and three oral warnings. He was told there would be no more warnings and had been suspended on the last occasion prior to his dismissal. The failure to report to open the business is a very serious breach of the employer/employee contract. The Director's Delegate had ample grounds to find that there were standards set which were clear to the appellant and that he had failed to meet them to the extent that justified dismissal.

#### **ORDER**

Pursuant to Section 115 of the *Act* I order that the Determination dated June 10, 1997 be confirmed.

A handwritten signature in black ink, appearing to read 'John M. Orr', with a long horizontal flourish extending to the right.

**John M. Orr**  
**Adjudicator**  
**Employment Standards Tribunal**