

An appeal

- by -

Wayne Ledgerwood
(“Ledgerwood”)

- 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: David B. Stevenson

FILE No.: 2002/280

DATE OF HEARING: August 14, 2002

DATE OF DECISION: September 9, 2002

DECISION

APPEARANCES:

on behalf of Wayne Ledgerwood	In person
on behalf of Sun Peaks Resort Corporation	Dennis Corriani

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Wayne Ledgerwood (“Ledgerwood”) of a Determination of the Director of Employment Standards (the “Director”) dated April 26, 2002.

Ledgerwood had filed a complaint with the Director alleging his employer, Sun Peaks Resort Corporation (“Sun Peaks”) had terminated his employment without cause or notice, contrary to Section 63 of the *Act*. The Determination concluded that Sun Peaks had shown just cause to terminate Ledgerwood’s employment and, consequently, had not contravened of the *Act*, ceased investigating and closed the file on the of complaint.

Ledgerwood says that the Director made several errors in the findings of fact and reached the wrong conclusion about whether there was just cause to terminate him.

ISSUE

The issue is whether Ledgerwood has shown the Determination was wrong in its conclusions of fact and its conclusion that Sun Peaks had just cause to terminate his employment.

THE FACTS

Sun Peaks operates a ski resort near Kamloops. Ledgerwood was employed at Sun Peaks as a mechanic in the vehicle maintenance shop from November 22, 1998 to January 20, 2002 at a rate of \$20.00 an hour. The Determination outlined an employment history of recorded concerns and problems with his job performance and attitude. On November 18, 2000, Ledgerwood left a note that was perceived by Sun Peaks to be, and was accepted as, a resignation of his employment. A letter, accepting the resignation and identifying other areas of concern, was given to Ledgerwood on November 22, 2000. Following a discussion between Ledgerwood’s wife, Lee-Anne Ledgerwood, and Jamie Tattersfield, then Operations Manager for Sun Peaks, Ledgerwood was allowed to return to work. A letter, dated November 25, 2000 and signed by Ledgerwood and Mr. Tattersfield, outlined the terms upon which he was being allowed to return to work. The first paragraph makes that very clear:

The following terms and conditions, will outline the steps necessary for your continued employment. Please read them carefully and ask any questions you may have. Your signature below is our assurance you will abide by the terms and conditions of employment. If you do not then your employment may be terminated without further warning.

While there was some dispute from Ledgerwood concerning the ‘resignation’ document, upon which this whole series of events was based, there is no dispute from him that Sun Peaks’ concerns were not legitimate and that his signature on the November 25, 2000 letter acknowledged both their concerns and his agreement to abide by the employer’s policies and directives. The letter was clear notice to Ledgerwood that failure to meet the standard laid out in the letter, which included having him re-read, and re-sign acceptance of the employment conditions set out in the employment handbook, could result in his termination.

On November 1, 2001, Ledgerwood left a message on the telephone of Dennis Corriani, the Maintenance Supervisor for Sun Peaks, saying he would not be in to work and was taking a vacation day. On November 2, 2001, Ledgerwood and Mr. Corriani had a discussion about that call. Ledgerwood was reminded again that if he wanted a vacation day off he was to let Mr. Corriani know several days in advance or, alternatively, he could, with Mr. Corriani’s approval, switch shifts with another maintenance employee.

On January 16, 2002, Ledgerwood failed to report for work. He was terminated because of that failure. The Determination concluded his failure to report for work on that day, taken together with the earlier matters, justified his termination.

At issue during the investigation and in the hearing of this appeal were the circumstances surrounding his failure to report for work.

In the morning of January 15, 2002, Ledgerwood asked Mick Rawlings, the Vehicle Maintenance Lead Hand (and Ledgerwood’s immediate supervisor in the vehicle maintenance shop), if he could take the following day, January 16, 2002, off. Mr. Rawlings said he could not see a problem with that. There was further discussion about Ledgerwood’s request later in the day. There were differing versions of what discussion took place.

The Determination attributed the following position to Ledgerwood:

... Later in the afternoon [of January 15th], Mr. Rawlings approached him with misgivings about allowing the absence. Mr. Ledgerwood claims that after a brief discussion concerning workload, Mr. Rawlings allegedly changed his mind and said it would be okay to take the day off as planned.

In the appeal submission, Ledgerwood elaborated on the above events. He wrote:

... On Tuesday evening, Mick Rawlings came down the mountain from the Alpine Shop an hour and a half early saying there was nothing to do. He did say he wasn’t sure if he should of told me it was OK to take the day off and said maybe I should phone Dennis. I was working on a generator and finished it and was putting the tools away. Mick had gone across the shop and was talking to John Korrel about the new ratchet set that Todd Maclean had bought. He had talked to him for about 15 - 20 minutes and came back to me and stated talking about when the winch all the parts for the winch would be in and he ended up saying, “I’m not going to have the winch in tomorrow anyway, so I’m sure it will be OK for you to have it off”. I thought nothing more of it and took the day off as I had arranged.

In his evidence, Ledgerwood added the following information to the above statement:

... Mick came down about 1½ hours early. He said there was nothing to do. he proceeded to talk with Joel Korrel. He came over to the bench where I was and said, “Maybe I shouldn’t have told

you to take tomorrow off, because of the workload. Maybe you should phone Dennis.” He described the workload as including service on a CAT, winch out of the CAT and a couples of snowmobiles. I said OK, finished up and went to the back.

He then went on to recite how Mr. Rawlings later came to him and said it was OK for him to take the day off, he didn’t think he’d have the winch in anyway.

The position of Sun Peaks concerning those events came from Mr. Rawlings, who had provided his recollection of the discussion with Ledgerwood to Mr. Corriani on January 20, 2002. He recalled the morning discussion much as Ledgerwood described it:

. . . morning conversation between Mick and Wayne:

WAYNE

“Wednesday is a double up day, could I take one of my banked days off?”

MICK

“At the moment I cannot see a problem.”

Wayne worked out of the Burf shop all day Tuesday with the exception of coming up to the Alpine Shop for some tools. I arrived at the Burf shop around 4:30 pm. Wayne had been working on the Briggs and Stratton Gen Set all day. I explained about the work load we had for the Wednesday: (the winch parts had not arrived on the Tuesday.)

- winch had to be assembled
- utilities truck serviced
- brakes on E.T.V.
- CAT 30 to be serviced
- 3 sleds to be serviced.
- McGillvery Lake Gen Set parts had arrived and needed to be put on.

WAYNE

“I suppose I cannot have Wednesday off then?”

MICK

“No, we are too busy, if you really want it off you will have to phone Dennis at home and get his OK.”

This information was given to the investigating officer and included in the Determination. Mr. Rawlings repeated this information in his evidence. He denies there was any later discussion in which he gave Ledgerwood permission to take the day off.

It is Ledgerwood’s position in this appeal that Mr. Rawlings lied about there being no later discussion. He submitted that his motivation for lying was to cover his lack of production and performance on the day in question. He also submitted that Mr. Rawlings’ ability to clearly recall the events in question was

clouded by possible effects of combining prescription drugs and alcohol. Mr. Rawlings denied the allegation and, more specifically, denied being on a prescription drug. There was no evidence that Mr. Rawlings had consumed alcohol while on prescription drugs, either on the day in question or generally.

ARGUMENT AND ANALYSIS

The burden is on Ledgerwood, as the appellant, to persuade the Tribunal that the Determination was wrong, in law, in fact or in some manner of mixed law and fact. Specifically, the burden on Ledgerwood in this case is to show the Director wrongly concluded that Sun Peaks had just cause to terminate his employment. In order to satisfy that burden, he must show that it was patently unreasonable for the investigating officer to have accepted Mr. Rawlings' version of the discussions which took place in the late afternoon of January 15, 2002 and, by inference, to have rejected his version of those discussions. I am not persuaded that burden has been met.

The evidence does not show any basis for rejecting the evidence given by Mr. Rawlings. I agree with the comment in the Determination that Ledgerwood's argument concerning Mr. Rawlings' motivation for lying about whether he had given him permission to take the day off - to cover up his own lack of production - is more consistent with Mr. Rawlings version of events. Ledgerwood agrees that he was told by Mr. Rawlings that he could not have the day off because of the work load for the following day. It seems more likely that Mr. Rawlings, in the face of the described work load and particularly if he wished to avoid having to work too hard, as Ledgerwood alleges, would not have wanted to give Ledgerwood the time off.

Ledgerwood argued that if was told he needed to call Mr. Corriani for approval, that was a small thing to do relative to the risk of losing his job. That seems like a valid point. On the other hand, he and his wife had made plans to go to 100 Mile House for a couple of days at the end of that week, but snow had been forecast, leaving Wednesday (January 16th) as the only potentially clear day for travelling. The plan was to drive up to 100 Mile House Wednesday and return the same day, before any snow fell. It's possible Ledgerwood did not wish to risk those plans on the chance Mr. Corriani would say no. It's also possible that Ledgerwood did not truly believe he would be fired for taking the day without obtaining permission from Mr. Corriani, after all he had blown a shift on November 1, 2001 with nothing more than a verbal reprimand and a reminder of his obligation to let Mr. Corriani know several days in advance if he wanted a vacation day off.

I will comment on one final matter that was raised by Ledgerwood in one of his submissions on the appeal. In a submission to the Tribunal dated July 11, 2002, Ledgerwood alleged that the spouse of the investigating officer was in a managerial position with Sun Peaks. While the comment contained no specific allegation, the clear inference was that the investigating officer was in a conflict of interest because of this circumstance. The July 11, 2002 submission contained the first and only reference to this matter. The appeal itself did not raise any allegation of bias against the investigating officer. The inference is a serious one and Ledgerwood had an obligation, if he truly believed the investigation of his complaint was compromised, to establish the factual foundation for the allegation made. No support for the allegation has ever been included with any material filed by Ledgerwood on the appeal, nor was the matter raised in any other communication or at the hearing of this appeal.

The appeal must be dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated April 26, 2002 be confirmed.

David B. Stevenson
Adjudicator
Employment Standards Tribunal