

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 -

MRC Ventures Ltd., operating as Robin's Donuts
("MRC")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Ian Lawson

FILE NO.: 1999/134

DATE OF HEARING: August 16, 1999

DATE OF DECISION: November 17, 1999

DECISION

APPEARANCES

For the Appellant: Michael Cordick
The Respondent: Megan Gouldsbrough
For the Director of Employment Standards: no appearance

OVERVIEW

This is an appeal by MRC Ventures Ltd. operating as Robin's Donuts ("MRC") pursuant to s. 112 of the *Employment Standards Act* ("the Act"). The appeal is from a Determination issued by Kevin Molnar as a delegate of the Director of Employment Standards on February 16, 1999. The Determination required MRC to pay compensation for length of service in the amount of \$261.11 to former employee Megan Gouldsbrough ("Gouldsbrough"). MRC filed an appeal on March 10, 1999. An oral hearing was held at Terrace, B.C. on August 16, 1999.

FACTS

Gouldsbrough was employed by MRC as a clerk in the Robin's Donuts store in Kitimat, B.C. between March 13, 1997 and August 27, 1997. She was dismissed after Michael Cordick of MRC viewed a security camera tape which allegedly showed Gouldsbrough making a sandwich for consumption by the baker at the donut store, and then failing to enter this in-store purchase in her cash register. This act took place near the end of Gouldsbrough's shift, and her failure to record the baker's sandwich was deemed by MRC to be an act of theft justifying dismissal.

ISSUE TO BE DECIDED

This appeal requires me to decide whether Gouldsbrough was dismissed for cause.

ANALYSIS

At the appeal hearing, MRC asked me to view the security videotape which gave rise to the discovery of the alleged theft and to Gouldsbrough's dismissal. I agreed to view the videotape, and despite the onus resting upon MRC to demonstrate some error or injustice in the determination, I decided that viewing the tape might be the most efficient approach to considering whether there is any merit to the appeal. MRC presented no evidence other than the videotape, and the only other evidence heard at the appeal was from Gouldsbrough herself.

After viewing the videotape, and before hearing from Gouldsbrough, I was struck by the obvious lack of any proof of wrongdoing by Gouldsbrough. The tape shows Gouldsbrough

serving customers at a quiet point in the evening, and during a lull, she appears to have been asked by the baker to make a sandwich for him. After making the sandwich, she delivers it to the baker in the kitchen, and she spends a few moments chatting with him on two occasions, between trips to the front to serve customers and replenish supplies. Her shift ended shortly thereafter. There is no dispute that staff purchases of food must be entered into the cash register, at a 50% discount from regular prices. Equally, there is no dispute that Gouldsbrough failed to enter the sandwich purchase in the cash register, as the videotape shows in detail. However, there is considerable doubt whether the videotape shows an act of theft. Watching the videotape gives rise, instead, to a conclusion that Gouldsbrough simply forgot to ring in the sandwich. There is no indication on the videotape that Gouldsbrough designed surreptitiously or otherwise to steal a sandwich from MRC for the benefit of the baker.

Indeed, I asked MRC how this alleged theft came to their attention, given the value of the sandwich was approximately \$2.00. I was told that Mr. Cordick himself customarily watches these videotapes in his spare time. It was during one of these evening video-watching sessions that Mr. Cordick concluded he had just witnessed Gouldsbrough committing a theft. Mr. Cordick's keenness to watch these videotapes is of note, as they are very difficult to view; they are composed of shots from three different cameras, which alternately flash on the screen for fractions of a second. An employer who is driven to spend evenings watching such surveillance tapes would either be the victim of serious employee theft or be afflicted by an irrational fear that his employees were about to steal from him. It is my considered conclusion, having heard Mr. Cordick's submissions, that he is the victim of the latter of the two evils.

Gouldsbrough gave evidence that she had simply forgotten to ring in the sandwich. She was fully conversant with MRC policy on staff purchase of food, and pointed out that MRC is in possession of a receipt showing that she had rung in another employee's food purchase earlier the same day of her alleged sandwich theft. Gouldsbrough said she had never had problems with MRC and had not been given a chance to explain that she had forgotten. Instead, she had been summarily dismissed. She told me that she had come to this employment by MRC after being on welfare for a period of time. She then told me that following her dismissal in August, 1997 she lived on her savings and then returned to the welfare rolls, where she remained until only recently. She advised she had just found part-time employment one night per week at a local hotel. She said she has found it difficult to find other employment, being stigmatized by MRC's dismissal for theft.

I digress to note parts of Gouldsbrough's life during the past two years, because it has taken that long for her to be exonerated. I have heard nothing from MRC -- and there is nothing in the videotape -- that causes me to think even for a moment that Gouldsbrough stole anything from MRC. My conclusion, in fact, is that MRC has committed the most grave of all wrongs that an employer can inflict upon an employee: raise a false allegation of theft and then dismiss the employee. Having heard all the evidence that could be mounted against Gouldsbrough, I found myself wishing I was not fettered by this Tribunal's statutory jurisdiction and was able to award more than statutorily-limited damages Gouldsbrough. The suffering Gouldsbrough experienced over the past two years as a result of MRC's baseless allegation of theft is easily a hundred times the amount of pay in lieu of notice she will receive as a result of my dismissal of this appeal. Should MRC behave in a similarly low manner toward any current or future

employee, I can only hope that employee elects to sue for damages in a court of law, instead of filing a complaint with the Director. MRC's shameless disregard for the rights of its employees might only be effectively deterred by a substantial damage award and a penalty in costs.

ORDER

After carefully considering the evidence and argument, I find that the Determination made by Mr. Molnar is correct and the appeal should be dismissed. Pursuant to s. 115 of the *Act*, I order that the Determination dated February 16, 1999 be confirmed, together with interest pursuant to section 88 of the *Act*.

Ian Lawson
Adjudicator
Employment Standards Tribunal