

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 -

Europa Hair & Esthetics
("Europa")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Cindy J. Lombard

FILE NO.: 1999/371

DATE OF HEARING: August 23, 1999

DATE OF DECISION: October 5, 1999

DECISION

APPEARANCES

The Appellants, Emily Galic-Baker and Wendy Galic-Tower, operating Europa Hair & Esthetics, appeared as did the Respondent, Jean M. Graham.

OVERVIEW

This is an appeal by the employer, Emily Galic-Baker and Wendy Galic-Tower, operating Europa Hair & Esthetics (“Europa”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against a Determination of the Director of Employment Standards (the “Director”) issued on May 25, 1999.

The Determination was issued following a complaint by the former employee, Jean M. Graham (“Graham”) that she was terminated without notice or compensation for the length of service in contravention of Section 63(1) of the *Act*.

After investigating the complaint, the Director issued a Determination that Graham was dismissed without cause and ordered that she be paid one week compensation in the total number of hours of 32 x \$7.00 per hour which equalled \$224.00 plus \$8.96 vacation pay thereon for a total of \$232.96 not including interest. The employer, Europa Hair & Esthetics, counters that there was just cause for dismissal, namely:

1. Graham was in conflict of interest with the employer in that she was operating an esthetic service out of her home.
2. Graham provided a poor quality of service and was argumentative with the employer.

ISSUES TO BE DECIDED

Whether the employer, Europa, had just cause to dismiss the employee, Graham, without notice.

FACTS AND ANALYSIS

Graham was employed by the Appellant-employer between February 14, 1997, and August 16, 1997.

Section 63 of the *Act* provides that “after three consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week’s wage as compensation for length of service.”

The employer is exempt from this liability if there is just cause for the dismissal.

The onus is on the Appellant-employer to show that the Determination was incorrect. Furthermore, the burden of proving that the conduct of Graham justifies dismissal is on the Appellant-employer.

Just cause can include a single act of misconduct if the conduct is willful, deliberate and of such consequence as to repudiate the relationship. In other words, a single act must be very serious. In the absence of such serious misconduct, then an employer may establish just cause by proving:

- a) that reasonable standards of performance have been set and communicated to the employee;
- b) that employee was warned clearly that his or her continued employment was in jeopardy if such standards were not met;
- c) a reasonable period of time was given to the employee to meet such standards; and
- d) the employee did not meet those standards.

In this case, the employer, Europa Hair & Esthetics, says firstly that there was a fundamental breach in that Graham was in conflict with her employer’s business because she had started an esthetic business out of her home. Graham says that she had taken a massage course and had purchased a massage table. She stated that she was doing massage by donation merely as a means of paying for her massage table. Any esthetic services she said she referred to her employer, Europa.

The evidence before me is insufficient to discharge the onus on the employer to show a willful act intended to repudiate the employer-employee relationship. The employer failed to satisfy the onus of disproving the determination of the Director’s delegate on the balance of probabilities.

Europa furthermore says that Graham was warned that she needed to improve the quality of her services and be non-argumentative with the other staff at Europa which she did not meet, that they then terminated her services in July and reinstated her for approximately one week with her employment finally being terminated August 16, 1997.

Graham states that to the contrary, there were no complaints about the quality of her services. Graham says she was terminated because she wanted time off.

Again, the employer has failed to discharge the onus of disproving that the conduct of the employee justifies a dismissal, that that employee was clearly warned that if she did not meet certain reasonable standards that her job was in jeopardy and had a reasonable period to meet that expectation.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination with respect to Graham be confirmed as issued in the amount of \$258.53 plus whatever further interest may have accrued to Section 88 of the Act since the date of its issue.

Cindy J. Lombard
Adjudicator
Employment Standards Tribunal