

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 -

Williams Security Services Ltd.
("Williams Security")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE NO.: 97/501 & 97/510

DATE OF HEARING: September 29, 1997

DATE OF DECISION: October 23, 1997

DECISION

OVERVIEW

The appeal is by Williams Security Services Ltd. (“Williams Security”) under section 112 of the *Employment Standards Act* (the “Act”) against two Determinations of the Director of Employment Standards (the “Director”), both dated June 11, 1997. In one Determination, Williams Security is found to have terminated Ryan Renshaw without notice or just cause and owe one week’s compensation for length of service as a result. In that same Determination Williams Security is found to have made deductions from Renshaw’s pay in contravention of section 21 of the *Act*. The second Determination imposes a penalty on the employer pursuant to section 29 of the *Employment Standards Regulation*.

APPEARANCES

Dave Lambert	For Williams Security
Darlene Lovett	Witness
Ryan Renshaw	On His Own Behalf
Pat Cook	Delegate of the Director

ISSUES TO BE DECIDED

Did Williams Security have just cause to terminate Ryan Renshaw?

Have moneys been deducted from Renshaw’s pay in contravention of the *Act*?

Is it a justifiable penalty that has been imposed on Williams Security?

FACTS

Ryan Renshaw began work as a security guard for Williams Security on July 29, 1996. A series of events in January and February of 1997 led to his termination on February 24, 1997. The events are as follows:

- Renshaw was issued a photo radar ticket while on duty on January 12, 1997. He was travelling at 120 kilometres an hour in a 70 kilometre an hour speed zone.
- A man complained to Williams Security about Renshaw’s behaviour and his abusive language on the 25th of January. The man was the customer ahead of Renshaw at a gas station.

- While on patrol on the 7th of February, Renshaw lost control of his security vehicle while braking for the tight corner of a driveway and skidded head-on into a barricade. The posted speed limit is 10 km. an hour. Repairs were in the neighbourhood of \$4,500.
- On another shift in February, Renshaw chose to shoot a few baskets as a way of staying awake. The basketball had been left in the truck by another employee.
- On February 21, 1997 Renshaw took Darlene Lovett out for training. His excessive speed led Lovett to take over the driving. While she was driving, Renshaw proceeded to shoot an elastic band at her and shine a bright flashlight in her eyes.

According to Dave Lambert of Williams Security, the decision to terminate is based on what it saw as Renshaw's habit of speeding, his basketball playing, the gas station altercation and the Lovett incident. And according to Lambert, he clearly told Renshaw to slow down and that his behaviour had better improve or he would be terminated. Renshaw says that he was only told to "slow down" and, as a result of the gas station incident, to "calm down", no one told him his job was on the line. Lovett says that Renshaw made it clear to her that he was worried about keeping his job. That may be. But there is no hard evidence that it was made plainly clear to Renshaw that his job was in jeopardy. There is nothing in writing, no corroborating testimony. And it does not follow that, if Renshaw was worried about his job, he then had to have been warned that his job was in jeopardy. Events themselves presented him with reason enough to worry. In short order his employer had received a speeding ticket, a complaint about his behaviour from a member of the public and then news of his accident.

There was a deduction of \$325 from Renshaw's last pay cheque. Of that, \$150 was for the speeding ticket. The remainder was the cost of collision repairs not covered by insurance, the deductible. According to Lambert, Renshaw agreed to pay for the ticket and the insurance deductible at a rate of \$50 per pay period. On appeal the company argues that as Renshaw was responsible for the ticket and the accident and that he should be made to pay the \$325 that Williams Security is out of pocket.

The Director has determined that the deductions are contrary to the s. 21 of the *Act*. I am told that the decision was then made to impose a penalty on Williams Security under the *Regulations*. Not made clear is why a penalty is imposed in the case of Williams Security given that the penalty is discretionary. The Determination is devoid of the reason(s) for that.

ANALYSIS

Section 63 of the *Act* sets out that employers are liable for compensation for length of service where employment is beyond 3 consecutive months. That the liability for compensation for length of service can be discharged is set out in section 63 (3). That section of the *Act* is as follows:

- (3) *The liability is deemed to be discharged if the employee*
- (a) *is given written notice of termination as follows:*
 - (i) *one week's notice after 3 consecutive months of employment;*
 - (ii) *2 weeks' notice after 12 consecutive months of employment;*
 - (iii) *3 weeks' notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 weeks' notice;*
 - (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.*

A single act of misconduct may be of such a serious nature as to justify an employee's termination. Examples of less serious misconduct, when considered together, may also constitute just cause for dismissal as may the chronic inability of an employee to meet the requirements of a job. In all cases the onus is on the employer to show just cause.

Williams Security did not terminate Renshaw for a single act of misconduct but considered several less serious examples of misconduct as a whole. Through the course of its decision making, the Tribunal has come to hold in such cases that an employer has just cause where the following is shown:

- a) A reasonable standard of performance was established and communicated to the employee;
- b) the employee was clearly and unequivocally notified that his or her employment was in jeopardy unless the standard was met;
- c) the employee is given the time to meet the required standard; and
- d) the employee continued to demonstrate an unwillingness to meet the standard.

As matters are presented to me Renshaw's conduct was less than acceptable. His actions show a lack of maturity and common sense. But for Williams Security to have just cause to terminate for Renshaw's misconduct, the employer must have made it plainly clear to the employee that his job is in jeopardy unless he began to meet its reasonable standard(s), and he then had to be given the time to improve. The Director's delegate was unable to conclude that there had been the necessary warning that he stood to be fired unless he improved. I agree, that is how the facts are presented to me. Williams Security fails to show that it gave Renshaw plain, clear warning that his job was in jeopardy and for that reason, the finding that Renshaw is owed compensation for length of service is confirmed.

The Director has found pay deductions which are contrary to the *Act*. Sections 21 and 22 of the *Act* set out which deductions are permitted. They are as follows, the emphasis is mine:

21. (1) ***Except as permitted or required by this Act or any other enactment of British Columbia or Canada, an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose.***

(2) *An employer must not require an employee to pay **any of the employer's business costs** except as permitted by the regulations.*

(3) *Money required to be paid contrary to subsection (2) is deemed to be wages, whether or not the money is paid out of an employee's gratuities, and this Act applies to the recovery of those wages.*

22. (1) *An employer must honour an employee's written assignment of wages*

(a) *to a trade union in accordance with the Labour Relations Code;*

(b) *to a charitable or other organization, or a pension or superannuation or other plan, if the amounts assigned are deductible for income tax purposes under the Income Tax Act (Canada),*

(c) *to a person to whom the employee is required under a maintenance order, as defined in the Family Maintenance Enforcement Act, to pay maintenance,*

(d) *to an insurance company for insurance or medical or dental coverage, and*

(e) *for a purpose authorized under subsection (2).*

(2) *The director may authorize an assignment of wages for a purpose that the director considers is for the employee's benefit.*

(3) *An employer must honour an assignment of wages authorized by a collective agreement.*

(4) *An employer may honour an employee's **written assignment of wages to meet a credit obligation.***

Renshaw may have verbally agreed to pay for his speeding ticket and for part of collision repairs but the deductions are not permitted by the *Act*. They are in violation of s. 21 (1) of the *Act*. As such, Williams Security must pay Renshaw the \$325 which was deducted from his last pay cheque, in addition to paying him compensation for length of service.

The last matter which I must address is the penalty which has been imposed on Williams Security. For reasons which are set out at length in *Randy Chamberlin and Sandy Chamberlin operating as Super Save Gas* BCEST No. D374/97, fairness demands that there be a clear statement of reasons for the penalty, the power to impose the penalty being discretionary (“... the director *may* impose a penalty ...”). Why is a penalty imposed in the case of Williams Security when no penalty is imposed in similar cases? The fact that the Determination fails to state why means that Williams Security has no way of knowing the case against it. The fact that the Determination is devoid of the reason or reasons for the penalty against Williams Security leads me to cancel that particular Determination.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination which is dated June 11, 1997 and which awards Ryan Renshaw compensation for length of service and moneys which were deducted from his pay in contravention of the *Act*, be confirmed.

I order, pursuant to section 115 of the *Act*, that the Determination dated June 11, 1997 which imposes a penalty on Williams Security, pursuant to section 29 of the *Employment Standards Regulation*, be cancelled.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal

LDC:lc