

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 -

Bishop's Seafood Company Ltd.
Operating as The Codfather's Seafood Deli
("Codfather's")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Cindy J. Lombard
FILE NO.: 1999/555
DATE OF DECISION: November 5, 1999

DECISION

OVERVIEW

This is an appeal by the employer, Bishop's Seafood Company Ltd., operating The Codfather's Seafood Deli ("Codfather's) pursuant to Section 112 of the *Employment Standards Act* (the "Act") against a Determination of the Director of Employment Standards (the "Director") issued on August 24, 1999.

The Determination was issued following a complaint by the former employer, Brian Doherty ("Doherty"). He was terminated without notice or compensation for length of service in contravention of Section 63(1) of the *Act*. After investigating the complaint, the Director issued a Determination that Doherty was dismissed without cause and ordered that Codfather's pay to Doherty compensation in the total number of hours of 40 hours at \$10.00 per hour which equaled \$400.00 plus \$16.00 in vacation and interest pursuant to Section 88 of the *Act* in the amount of \$38.94 with a total due of \$454.94.

The employer, Codfather's, says that there was just cause for dismissal, namely:

1. That prior to the date of the dismissal Doherty had been consistently late to his shift.
2. On the date of his dismissal, Doherty was several hours late not because his truck had broken down on a fishing trip as alleged but because he simply decided to stay out fishing longer.

ISSUE TO BE DECIDED

Whether the employer, Codfather's, had just cause to dismiss the employee, Doherty, without notice.

FACTS AND ANALYSIS

Doherty was employed by the Appellant-employer between April 21, 1997, and March 28, 1998, as a cook at the rate of \$10.00 per hour. Section 63 of the *Act* provides that "after three consecutive months of employment, the employer becomes liable to paying an employee an amount equal to one weeks' 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 Doherty justifies dismissal is on the Appellant-employer, Codfather's.

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 this case, the single act relied on by Codfather's is that Doherty arrived two and a half-hours late to work. According to Doherty, he was away fishing the day before. When he woke up in the morning to drive to work he discovered that his car wasn't working. Doherty gave evidence to the Director that he immediately called the Manager of Codfather's, Dan Moloney, to let him know of the difficulties. Len Bishop, owner of Codfather's, gave evidence to the Director was that Doherty lied, that there was no car difficulty and that he was merely late. Irrespective of where the truth may lie, this single *Act* was not willful, deliberate and of such consequence as to repudiate the employer-employee relationship.

In the absence of 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 the 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;
- d) the employee did not meet those standards.

In this case, Len Bishop, owner of Codfather's, says that Doherty was consistently late for his shifts during the course of his employment. Doherty denies that this is true. Bishop, who is not the onsite manager, provides no evidence to support the truth of his statement or that at any time Doherty was given warning that late appearances jeopardized his continued employment relationship.

The evidence before me is insufficient to discharge the onus on the employer, Codfather's, of proving conduct that constitutes just cause.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination with respect to Doherty be confirmed as issued in the amount of \$554.94 plus whatever further interest may have accrued pursuant to Section 88 of the *Act* since the date of its issue.

Cindy J. Lombard
Adjudicator
Employment Standards Tribunal