

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 -

Vancouver Taxi Ltd.
("Taxi")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE NO.: 1999/551

DATE OF HEARING: November 15, 1999

DATE OF DECISION: December 02, 1999

DECISION

OVERVIEW

Vancouver Taxi Ltd. (“Taxi” or “the Appellant”) has appealed a Determination by a delegate of the Director of Employment Standards (the “Director”) dated August 19, 1999. The appeal is pursuant to section 112 of the *Employment Standards Act* (the “Act”).

The Determination rejects a claim for wages by “Joe” Yusuf Gani but orders Taxi to pay Gani 5 weeks’ compensation for length of service, with vacation pay and interest over and above that. The delegate reports that the employer acknowledged that it did not provide Gani with notice of termination but claimed just cause for reason of his failure to pay lease fees, NSF cheques, customer complaints and a complaint by a Hyatt hotel. The delegate in rejecting that claim states, “there is no evidence that Gani was warned that his employment was in jeopardy, as a result of the Hyatt incident or alleged non-payment of lease fees. No evidence has been provided to establish if Gani was the driver of cab #47 on the shift which caused the complaint from the Hyatt manager.” The delegate goes on to say that Taxi failed to provide evidence which shows that lease moneys were still outstanding at the point of termination.

Taxi, on appeal, claims that the delegate is wrong on the facts. The employer claims that Gani failed to make lease payments totalling \$2,208.68 and was warned that his job was in jeopardy. Taxi notes Gani failed to show that he made up for his NSF cheques. It also raises the matter of the complaint by the Hyatt Hotel for a second time.

APPEARANCES

Harwinder Makkar	Speaking for Taxi
Harparkash Judge	Part owner of car 47
Taranjit Bains	Witness for the employer
“Joe” Yusuf Gani	On his own behalf

ISSUES TO BE DECIDED

What I must decide is the matter of whether the employer did or did not have just cause when it terminated Gani.

FACTS

Gani was employed as a taxi driver. The employment was terminated on April 8, 1998.

Gani drove car 47. That taxi is owned by Harparkash Judge and Davinder Singh (who also goes by the name of "Davinder Judge"). Gani, at least initially, agreed to pay \$825 per week for use of the taxi. That is set out in two contracts which cover the period December 15, 1996 to February 28, 1997 and March 15, 1997 to June 30, 1997. I am not shown that there was any agreement on the rent charged for the car after July, 1997.

The owners of car 47 were both out of the country for the last few weeks of 1996 and the first 6 weeks of 1997. Taranjit Bains agreed to keep an eye on their car while they were away. Gani in this period was to pay Bains lease payments as they were due. Bains recalls that Gani was frequently late with his lease payments. On the basis of what he has to say, I find that Gani was behind in his lease payments at times, in the period when Judge and Singh were away, but that he never fell greatly behind in his payments and that he was continuing to make lease payments.

In mid-February, 1997, Judge returned from his travels. According to Taxi, from that point on, Gani fell further and further behind in his lease payments, to the point where he owed \$2,208.68 in total. I am told that it happened in part because Gani issued several NSF cheques. That Gani issued a number of cheques which were returned NSF is clear. What Taxi fails to show is whether Gani, at the point of termination, was significantly behind in his lease payments or, indeed, that Gani still owed Taxi any moneys at all. Taxi does not produce an accounting, never mind, a credible accounting, of what was due and paid in the way of lease payments, nor produce the sort of evidence which would allow me to determine whether lease payments were still outstanding.

Two letters surface with the appeal. Malkiat Singh Gill, former manager of Taxi, appears to write for the purpose of telling the Tribunal that Gani was verbally warned by him, in February, 1998, and again in March of 1998, that unless he paid the lease owing for cab 47 that he would not be given a cab for driving. Bains, in an almost identical letter, writes to say that he gave Gani the same sort of warning, for the same reason, in February, 1998. Neither letter is dated. That either Bains or Gill were in a position to know whether Gani was actually behind in his lease payments, or had any way to know that, is not shown.

Bains in February, 1998, was neither part owner of cab 47, nor Gani's supervisor.

While Taxi raises the matter of the complaint by the Hyatt Hotel, it again fails to show that Gani was actually the driver of car 47 on the day of the Hyatt incident. Indeed, as matters are presented to me, Taxi does not even attempt to make that point.

ANALYSIS

What I must decide is whether the appellant has or has not met the burden for persuading the Tribunal that the Determination ought to be varied, cancelled or referred back to the Director for reason of what is either an error in fact or in law.

Taxi does not claim an error in law. What Taxi claims is that the delegate is wrong on the facts. On appeal, the employer claims that the delegate is wrong on three basic points of fact. Taxi claims that it was in fact an act by Gani that led to the complaint by the Hyatt Hotel. Taxi's second allegation is that Gani owed more than two thousand dollars in lease fees at the point of termination. And it claims that Gani was in fact warned that his job was in jeopardy.

Taxi failed to establish, during the course of the delegate's investigation, that Gani was actually the driver of car 47 at the time of the Hyatt incident. As it presents matters to me, Taxi has failed to do that on appeal as well.

Taxi did not provide the delegate with evidence showing that Gani was behind in his lease payments at the point of termination. Taxi, on appeal, does not produce a credible accounting of what was due, and paid, in the way of lease fees. It has failed to show that Gani was behind in his lease payments at the point of termination.

The employer produces a letter from Bains, and a letter which appears to be from Malkiat Singh Gill, but I can see no reason to attach any weight to those letters. The letters are not dated, are virtually identical, and surface after the Determination. They neither confirm that Gani was behind in his lease payments, nor confirm that Gani was plainly told that his job was in jeopardy. It is not clear that either of the men knew, or even had any way to know, that Gani was in fact behind in his lease payments in February and/or March of 1998, never mind at the point of termination. It was not the job of either of the men to know, nor their business. It is most unlikely that Bains would have warned Gani as is alleged in that he had no reason to. He was neither an owner of car 47, nor Gani's supervisor.

Taxi argues that Gani has failed to show that he made up for his NSF cheques. But it is simply not up to Gani to show what was paid in the way of lease moneys. The onus is on the employer to show that it had just cause and, in this case, therefore, that it was either owed a substantial amount of money at the point of termination, or was in a position to terminate Gani for reason of minor misconduct or his failure to meet the standards expected of him.

As Taxi presents matters to me, it fails to challenge the Determination in any important respect through the presentation of either evidence or argument. The appeal may be dismissed, for that reason alone, pursuant to section 114 of the *Act* as one which is frivolous, vexatious or trivial or not in good faith.

114 (1) The tribunal may dismiss an appeal without a hearing of any kind if satisfied after examining the request that

- (a) the appeal has not been requested within the time limit in section 112 (2),
- (b) the appeal is not within the tribunal's jurisdiction, or
- (c) the appeal is frivolous, vexatious or trivial or is not brought in good faith.

The appeal may also be dismissed for reason of the appellant's failure to show that Gani's termination was in any way justified. Section 63 of the *Act* imposes the liability to pay compensation for length of service. Subsection 63 (3) establishes that the liability may be discharged in certain circumstances.

63 (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.**

(my emphasis)

A single act may be so serious as to justify the immediate termination of employment. And employer may also have just cause where the misconduct is less serious but repeated, or for reason of the chronic inability of an employee to meet the requirements of a job. In all cases the onus for showing just cause lies with the employer.

Taxi has not shown that it had just cause for immediate dismissal for reason of the fact that Gani owed a substantial amount of lease moneys. It is not explained to me how some failure to pay lease moneys, even where the amount owed is very large, will present an employer with just cause in that it is a credit obligation and does not go to work performance. But accepting that it is for the moment, it has not been shown in this case that any amount of money was owed at the point of termination.

In cases where just cause is alleged for reason of minor misconduct which was repeated, or generally unsatisfactory work, it is the well established view of the Tribunal [*Randy Chamberlin and Sandy Chamberlin operating as Super Save Gas*, BCEST No. D374/97] that the employer has just cause only where the employer shows the following:

- a) That reasonable standards of performance were established and communicated to the employee;
- b) the employee was plainly and clearly warned that his or her employment was in jeopardy unless such standards were met;
- c) the employee was given sufficient time to improve; and

d) the employee did not meet those standards.

I am told that Gani was warned by Malkiat Singh Gill, then Bains, that he would not be given a cab unless he paid lease moneys. But the letters carry no weight. Taxi does not show that Gani received plain, clear warning that his job was in jeopardy for a failure to meet a standard of work performance. It has, moreover, not been made clear that, if he was warned, that he was given sufficient time to improve and that he actually failed to meet the standard, the latter because Taxi fails to establish that Gani owed any lease moneys at the point of termination.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination dated August 19, 1999 be confirmed in the amount of \$2,433.48, and to that amount I order the payment of what further interest has accrued pursuant to Section 88 of the *Act*, since the Determination's date of issuance.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal