

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-

Strataco Management Ltd.

(“Strataco” or the “employer”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 97/524

DATE OF HEARING: October 27th, 1997

DATE OF DECISION: December 9, 1997

DECISION

APPEARANCES

G. Stephen Hamilton for Strataco Management Ltd.
Ralph L. Philip on his own behalf
No appearance for the Director of Employment Standards

OVERVIEW

This is an appeal brought by Strataco Management Ltd. (“Strataco” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from Determination No. CDET 006440 issued by the Director of Employment Standards (the “Director”) on June 19th, 1997 under file number 191864 (the “Determination”).

The Director determined that Strataco owed its former employee, Ralph L. Philip (“Philip”), the sum of \$2,160.84 on account of unpaid compensation for length of service under section 63 of the *Act*. The employer agrees that Philip is entitled to the amount due under the Determination if it did not have just cause for dismissal. In its appeal documents, the employer also alleged that the Director breached section 77 of the *Act*, however, this particular ground of appeal was abandoned by Mr. Hamilton, on behalf of the employer, at the outset of the appeal hearing.

ISSUE TO BE DECIDED

The only issue that I need address is whether or not the employer had just cause to terminate Philip, on or about March 1st, 1996.

At the conclusion of the employer’s case, and following submissions from the employer’s counsel, I advised the parties that I was not satisfied that the employer had made out a *prima facie* case of just cause and accordingly, there was no case for Philip to answer. My reasons for so finding are now set out below.

FACTS

Strataco manages large condominium projects on behalf of the strata owners. Currently its management portfolio consists of over 100 such projects. At the point of his termination, Philip had been employed with Strataco for about four years.

The employer called three witnesses--Jean Pierre Daem (the company president and a director), Keith Loughlin, a senior property manager employed by Strataco and David Albrice, also a property manager employed by Strataco.

Mr. Daem testified that due to ongoing health problems he transferred some of his managerial responsibilities to Messrs. Loughlin and Albrice sometime in the summer of 1995; sometime later Philip was told that he would now be reporting to Mr. Loughlin rather than to Mr. Daem. Mr. Daem was not present and did not otherwise witness the events that led to Philip's termination on March 1st, 1996 although he did authorize the termination which was predicated on what Daem understood to be a "flare-up" by Philip.

Mr. Loughlin testified that sometime in early 1996 Philip, being a "community manager", began reporting to Loughlin. Loughlin was at that time a Senior Property Manager, having been with Strataco for some six years. By way of a memorandum dated February 19th, 1996 Loughlin advised Philip that they would henceforth meet on Thursday mornings to "review the activities at the various sites in the portfolio". This latter memorandum continues "...from what I have seen to date I am quite satisfied with the way you are carrying out your responsibilities".

A few days later, a problem arose with respect to an intercom at a "security gate" located at a Strataco-managed complex in Surrey. According to Loughlin, he contacted Philip by pager and when Philip called in for his message, Philip said that he was unable to attend to the matter immediately because he another appointment. Loughlin apparently gave Philip a work order which resulted in a memorandum from Philip to Loughlin dated February 21st in which Philip set out certain errors in the work order regarding basic background information. Philip's memo, in turn, spawned a further memorandum from Loughlin dated February 28th, 1996 in which Philip's approach to dealing with the particular problem was criticized.

According to Loughlin, on Thursday, February 29th, 1996, sometime between 10:00 and 11:00 A.M., Loughlin asked Philip whether Philip was ready for their regular Thursday meeting to which Philip replied: "No, I'm not meeting with you anymore". Loughlin, who thought that Philip was upset about being reprimanded by way of the February 28th memorandum, never told Philip that he was required to attend the meeting or that there might be serious, or indeed any, consequences if Philip failed to attend the meeting. Although both were in the office, Philip and Loughlin did not meet on the 29th although later on that afternoon Loughlin did tell Philip be "be in my office" the next morning.

The next day, March 1st, Philip did attend, as directed, at Loughlin's office at which time he was terminated. Philip was then escorted out the door; no formal letter of termination was ever issued. David Albrice, who also attended the meeting--and, I might add, for no other apparent purpose than to witness Philip's termination--testified that the meeting lasted no more than a minute and that the only matter he can vaguely recall is some sort of discussion "about who reports to whom". Albrice was of the view that the March 1st meeting may well have been arranged solely for the purpose of terminating Philip.

ANALYSIS

The employer's position before me is that Philip was terminated for "gross insubordination", in particular, a refusal to meet with Loughlin on February 29th, and to recognize Loughlin's managerial authority. I do not, however, consider this particular incident to constitute just cause for termination. In other words, this one incident did not, in my mind, constitute a repudiation by Philip of his contract of employment. In my view, the facts of this case are far removed from those in *Stein v. British Columbia Housing Management Commission*, (1992) 65 B.C.L.R. (2d) 181 (cited by Strataco's counsel in final argument) where the insubordination consisted of an ongoing and repeated refusal to carry out a mandatory client evaluation program. In *Stein*, not only had the plaintiff initially refused to carry out the program but his refusal continued even after an audit disclosed his failure and he had, in turn, then promised to implement the program.

Nor am I satisfied that the evidence discloses an absolute refusal by Philip to recognize Loughlin's managerial authority--indeed, Philip's attendance at Loughlin's office on the morning of March 1st, suggests otherwise. I note that there was an evident personality conflict between the two men (Daem confirmed as much in his testimony) and while Philip may well not have attended a scheduled meeting on the 29th, I note that nothing was ever said to him regarding the importance of the meeting. Although both men were in the office on throughout 29th, Loughlin never followed up with Philip to ensure that he attended the meeting. I also note that, the next day, Philip attended a meeting with Loughlin as directed. I am of the view that through his words and (in)action Loughlin led Philip to believe that their regular Thursday morning meeting would not proceed on the 29th. Certainly, I cannot accept that a single instance of failing to attend a management meeting, in the circumstances of this case, amounts to just cause for dismissal.

ORDER

Pursuant to section 115 of the *Act*, I order that Determination No. CDET 006440 be confirmed as issued in the amount of \$2,160.84 together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal