

An appeal

- by -

Louis Enterprises Ltd. operating as Lou's Grill
(“Lou’s”)

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: April D. Katz

FILE No.: 2001/625

DATE OF DECISION: November 7, 2001

DECISION

SUBMISSIONS:

Appeal filed	on behalf of Louis Enterprises Ltd.
Bryan Raymond	on his own behalf
D. Lynne Fanthorpe	on behalf of the Director of Employment Standards

OVERVIEW

The Director found that Louis Enterprises Ltd. Operating Lou's Grill ("Lou's") owed Bryan Raymond ("Raymond") overtime and holiday pay after investigating a complaint and Lou's paid the amount owing. The Director also found that Lou's owed Raymond compensation for length of service from September 1997 until January 2001. Lou's refused to pay the compensation for length of service based on an allegation that Raymond's employment was ended for 'just cause'. The Determination did not find any evidence to support a finding of cause and Lou's appealed the Determination.

ISSUE

The sole issue in this appeal is whether Lou's has shown there was just cause to end Raymond's employment.

ARGUMENT

Lou's submission in the Appeal states that Raymond was dismissed for just cause and therefore the Determination should be cancelled.

Raymond argues that no one at Lou's had ever raised concerns about his performance with him prior to his employment ending. The allegations that he short changed customers and had a bad attitude shocked Raymond. Raymond argues that he has worked in the service industry for 9 years and values customer service. Raymond suggests that Lou's ended his employment because he had been sick during the busy holiday season.

The Director's Delegate submits that although Lou's was asked to support the allegations of cause based on customer complaints no evidence was produced to support the allegations.

THE FACTS

Raymond worked for Lou's as a Bartender from September 1997 until January 2, 2001 at the rate of \$9.00 per hour. Raymond was sick for the two weeks prior to January 2, 2001, which was a busy time at Lou's. When Raymond returned to work on January 2, 2001 he was told his services were no longer required.

Raymond filed a complaint claiming that he had worked many hours of overtime and was paid a straight time. Raymond also claimed length of service compensation. Lou's paid the overtime and related vacation time found to be owing but refused to pay the length of service compensation on the basis that Raymond had a bad attitude and Lou's had received customer complaints and given Raymond written and verbal warnings. Lou's produced one written warning from January 4, 1999, which alleged Raymond had been an hour late for work. No other evidence was provided.

Raymond's submission was that he had worked in the service industry for 9 years and had a good relationship with customers which was important to him. Raymond's evidence was that no one at Lou's had raised any customer or attitude concerns with him prior to his employment ending.

In the Appeal filed Lou's states

“The Employment Standards Fact Sheet for “Just Cause” states that theft, fraud and dishonesty are examples of just cause. Bryan Raymond was fired because he stole (theft) from customers by short – changing them. There are numerous customer complaints of this. Therefore we had the right to fire without compensation for length of service.”

No specific evidence in support of these allegations was provided to the Delegate or for the Appeal.

ANALYSIS

The onus of proving the Director has erred is on the appellant in an appeal to the Tribunal. Lou's is appealing the Director's finding that compensation for length of service was payable based on the number of years worked.

Lou's has provided no other evidence to support the allegation of just cause to end Raymond's employment other than the statement quoted above from the Appeal Form. No customer complaints or evidence from supervisors about speaking to Raymond was submitted.

CONCLUSION

Based on the evidence presented I find no basis on which to vary or cancel the Determination. Lou's has not discharged the onus on it to demonstrate an error in the Determination. I deny the appeal and confirm the Determination

ORDER

Pursuant to section 115 of the Act, I order that the Determination in this matter, dated August 9, 2001 is confirmed.

April D. Katz
Adjudicator
Employment Standards Tribunal