

An appeal

- by -

Dean Goertzen  
("Goertzen")

- 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:** Kenneth Wm. Thornicroft

**FILE No.:** 2001/620

**DATE OF HEARING:** December 7, 2001

**DATE OF DECISION:** December 17, 2001

## DECISION

### APPEARANCES:

Dean Goertzen	on his own behalf
Jim Hendy, Agent	for Express Computer Service Center Inc.

### OVERVIEW

This is an appeal filed by Dean Goertzen (“Goertzen”) pursuant to section 112 of the *Employment Standards Act* (the “Act”). Mr. Goertzen appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on August 7th, 2001 (the “Determination”).

The Director’s delegate determined that Goertzen’s former employer, Express Computer Service Center Inc. (“Express”), had just cause to terminate Goertzen’s employment on or about November 1st, 2000 and, accordingly, Goertzen was not entitled to any compensation for length of service (see section 63 of the *Act*).

Mr. Goertzen’s appeal was heard at the Tribunal’s offices in Vancouver on December 7th, 2001 at which time I heard the testimony of Goertzen and Mr. Jim Hendy, the latter representing Express. Both parties attended the hearing via teleconference. No one appeared at the appeal hearing on behalf of the Director. In addition to the witnesses’ testimony, I have also considered the various documents and submissions submitted by the parties to the Tribunal.

### ISSUE ON APPEAL

Mr. Goertzen says that the delegate erred finding that there was just cause for his dismissal.

### FINDINGS AND ANALYSIS

Express sells and services computers. Goertzen was formerly employed as a service technician. Approximately two months’ prior to his termination, Goertzen sold a used computer part to a friend and kept the proceeds. At that time, the company’s protocol with respect to the sale of used parts was rather informal. When a customer’s computer required a new part, the part that had been replaced was to be returned to the customer; if the customer did not want the old part, it was kept in stock for resale. The proceeds of such resales were put into a “slush” fund that was used to pay for coffee and other office expenditures.

Express learned about Mr. Goertzen’s misconduct when the friend attempted to return the part and it was discovered that the sale had never been recorded in the company’s records. Mr.

Goertzen admitted to Mr. Hendy, the firm's general manager, that he had "pocketed" the money from the sale and, as a result, Goertzen was warned and a new policy was implemented with respect to used parts.

This new policy was confirmed in an e-mail that was sent to all Express staff and in a company staff meeting. Old parts were to be inventoried and any sales were to be documented exactly as new part sales (*i.e.*, a sales invoice was to be prepared and the sale properly recorded in Express' computer system). Service technicians were not supposed to prepare computer invoices; generally, the invoices were prepared by the cashier. Mr. Goertzen was also specifically informed that his friend (a regular customer who had an account with Express) was no longer to be permitted into the back portion of the store where parts were kept.

On or about October 31st, 2000, near the end of the work day, the store's cashier observed Goertzen's friend in the back parts area--contrary to express instructions that had been given to Goertzen. She also observed Goertzen placing some computer parts into his backpack. The receptionist then went upstairs to see Mr. Hendy in his office where she outlined what she had observed. In the meantime, Goertzen prepared a handwritten invoice (using some old preprinted forms that were no longer in common use having been replaced by a computerized invoicing system) and left the invoice, along with about \$25 cash, on a work table near in the back of the store (cash left in the store overnight is supposed to be stored in a strong box) and then left the store. Goertzen says that he personally documented a sale of a used part to his friend because the cashier had left for the day and he used a handwritten form because that was the way he understood sales were to be documented when the cashier was not available. He understood that he was the last to leave the store that afternoon and locked up the premises before leaving.

Goertzen's explanation with respect to his actions is problematic. For one thing, the cashier was still on the premises and her car was still parked in the front parking area which is clearly visible through the store's front window. Had Goertzen turned on the alarm system (which is the responsibility of the last person leaving the store), the alarm would have sounded since both the cashier and Mr. Hendy were still in the upstairs office and would have triggered the motion detector. Further, since the friend had a credit account with Express, one has to wonder why this alleged transaction was a cash transaction. Finally, one has to wonder why Goertzen would leave cash and a handwritten invoice on a table near his work station rather than securing the money and the funds in, at the very least, some less obvious location.

I might add that Goertzen's explanation before me is not consistent with his previous written statement. In a letter to the delegate dated November 30th, 2000, Goertzen asserted that he "invoiced [the friend] for the part and *submitted it to accounting*" (my italics).

Mr. Hendy discovered the handwritten invoice and the cash and spoke to Goertzen about the matter the next morning. Goertzen did not have an explanation for having prepared a handwritten invoice; he could not explain why he did not charge any sales taxes on the transaction and now says that he did not believe that the sale was taxable; he did not challenge

the cashier's assertion that she observed him placing computer parts in his backpack. The above circumstances raise a suspicion about the bona fides of Goertzen's explanation for his behaviour. However, Express terminated Goertzen not because he took computer parts but, rather, for insubordination--namely, allowing his friend into the parts area and failing to deal with an alleged sale of used computer parts as he had previously been instructed. These instructions were clear and unequivocal; equally clear and unequivocal was Goertzen's failure to follow those instructions.

In my view, the delegate did not err in finding that Express had just cause to terminate Goertzen's employment.

### **ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed.

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**Kenneth Wm. Thornicroft**  
**Adjudicator**  
**Employment Standards Tribunal**