

An appeal

- by -

Paul Gilbert

- 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: John M. Orr

FILE No.: 2001/664

DATE OF HEARING: November 30, 2001

DATE OF DECISION: December 31, 2001

DECISION

APPEARANCES

Paul Gilbert

On his own behalf

George Cook

On behalf of Centaine Support Services Inc.

OVERVIEW

This is an appeal by Paul Gilbert (“Gilbert”) pursuant to Section 112 of the Employment Standards Act (the “Act”) from a Determination dated August 28, 2001 by the Director of Employment Standards (the “Director”).

Centaine Support Services Inc (“Centaine” or “the employer”) manages a number of group homes for people with disabilities. Centaine hired Gilbert on March 6, 2000 into a one-year union exempt position. There were a number of performance problems that eventually led Centaine to dismiss Gilbert at the end of October. Gilbert claimed that he was dismissed without just cause and that he was therefore entitled to compensation for length of service. He also claimed that he was entitled to some retroactive wages due to an increase that was subsequently negotiated.

The Director investigated Gilbert’s claims but came to the conclusion that Centaine had just cause to dismiss Gilbert and that there was no liability for compensation for length of service. The Director also found that there had been no increase in pay rates that would have given Gilbert an entitlement to retroactive wages.

Gilbert appealed to the Tribunal but following a hearing the Tribunal concluded that Gilbert did not meet the onus of persuading the Tribunal that there was any error in the Director’s determination. The determination is confirmed.

ISSUES

There were two issues in this case: firstly, whether the appellant was entitled to the benefit of some retroactive wages and, secondly, whether the termination was for just cause.

FACTS AND ANALYSIS

Gilbert alleged that during his employment or subsequent to his dismissal that a wage increase had been awarded that would have entitled him to retroactive pay for the most part of his employment. Centaine denied that any wage increase had been given that would have applied to Gilbert’s position. Gilbert was unable to produce any evidence to substantiate his claim that such

a wage increase had actually yet been implemented. As a result this aspect of the appeal was dismissed.

In relation to termination for “just cause” the Directors delegate found that Gilbert completed a probationary period that was satisfactory. But shortly afterwards his performance became a concern for the employer which resulted in disciplinary action being taken prior to termination.

On July 24 2000 Gilbert was suspended for three weeks. The reasons for this suspension were harassment of an employee, sharing confidential management information with a union employee, and trying to swear her to secrecy. In addition to this suspension Gilbert’s duties were modified to reduce the degree of supervision over staff.

On August 10 2000 Gilbert attended a meeting with the employer and he was advised in writing of his reduced duties and the duties that he was to maintain. One of the latter duties was to work at improving his working relationship with all staff. The employer made it clear to Gilbert that there would be no further toleration of any harassment of employees and that this was his last chance.

On October 17 2000 the employer met with Gilbert on account of his late arrival at work on three occasions. The employer was concerned because Gilbert had signed in as if he had been on time and received his regular wage.

On October 23 2000 the employer received a document from an employee concerning allegations that Gilbert had threatened the employee. The employer telephoned Gilbert at home regarding this incident but Gilbert would not attend a meeting with the employer to provide an explanation and he was dismissed.

The Director’s delegate correctly identified that the onus is on the employer to show that there was just cause for termination. The delegate applied the four-part test that this Tribunal has applied in cases of unsatisfactory performance. In the absence of misconduct or a fundamental breach of the employment relationship the employer must be able to demonstrate that:

1. Reasonable standards of performance have been set and communicated to the employee;
2. The employee was warned clearly that his continued employment was in jeopardy if such standards were not met;
3. A reasonable period of time was given to the employee to meet such standards; and
4. The employee did not meet those standards.

The Director's delegate carefully weighed in an appropriate manner the information provided to him during his investigation and applied the proper burden of proof. He concluded that the employer had set reasonable standards of performance and that these were communicated to Gilbert on more than one occasion. He found that Gilbert was clearly warned on August 10 2000 that it was his last chance to improve. He found that Gilbert was given plenty of opportunity to improve his working relationships with the unionised staff that he failed to do so. The delegate concluded that there was just cause for dismissal.

On an appeal to this Tribunal the onus is on the appellant to satisfy the Tribunal that the determination was wrong in fact or law. The arguments presented by Gilbert at this hearing were the same arguments raised during the investigation by the director's delegate. Gilbert disagrees with the substance of many of the complaints made against him. However, whether or not those allegations were substantially true it is clear that the employer acted reasonably in relation to the complaints. Gilbert was given the opportunity to address the complaints. He was warned, suspended, and had his duties reduced and clearly delineated. In every instant Gilbert was given the opportunity to present his version of events. On the final occasion prior to his dismissal Gilbert refused to attend a meeting with the employer to discuss the final and relatively serious complaint.

Overall, I am satisfied that the Director's delegate analysed the evidence carefully and fairly and came to reasonable conclusions of fact. I am also satisfied that the Director's delegate properly interpreted and applied the provisions of the *Act* and the jurisprudence of the Tribunal. I am not satisfied that the appellant has met the onus of persuading me that the determination was wrong and therefore the determination will be confirmed.

ORDER

I order, under section 115 of the *Act*, that the Determination dated August 28, 2001 is confirmed.

John M. Orr
Adjudicator
Employment Standards Tribunal