

Citation: Bao Khanh Zoe Nguyen  
2025 BCEST 36

EMPLOYMENT STANDARDS TRIBUNAL

An appeal  
pursuant to section 112 of the  
*Employment Standards Act R.S.B.C. 1996, C.113* (as amended)

- by -

Bao Khanh Zoe Nguyen

- of a Determination issued by -

The Director of Employment Standards

PANEL: Warren Insell  
SUBMISSIONS: Bao Khanh Zoe Nguyen, on her own behalf  
FILE NUMBER: 2024/158  
DATE OF DECISION: March 24, 2025

## DECISION

### OVERVIEW

1. Bao Khanh Zoe Nguyen appeals a determination (the “Determination”) made by a delegate of the Director of Employment Standards (the “Director”) on November 25, 2024. The Director determined that Ms. Nguyen’s employer, Uniqlo Canada Inc. (“Uniqlo”), had terminated her employment for just cause arising out of an incident of major misconduct. As a result, Ms. Nguyen was not entitled to compensation for length of service.
2. Ms. Nguyen checked off boxes on the Appeal Form to indicate that the appeal was based on the grounds that the Director had erred in law and the Director had failed to observe the principles of natural justice in making the Determination. Ms. Nguyen also provided new evidence that had not been provided to the Director at the time of the Determination.
3. Ms. Nguyen argues that the Director was biased in their weighing of evidence, failed to consider relevant evidence in making the Determination, and ignored human rights principles and workplace safety regulations.
4. For the reasons that follow, pursuant to section 114(1)(f) of the *Employment Standards Act (ESA)*, I dismiss the appeal without seeking submissions from the other parties because there is no reasonable prospect that the appeal will succeed.

### THE DETERMINATION

5. Ms. Nguyen was employed as a manager at one of Uniqlo’s stores. On one occasion, Ms. Nguyen stayed overnight at the store, having obtained prior approval from her regional manager.
6. Ms. Nguyen’s position was that she planned to work overnight at Uniqlo, with some of her employees, in order to change the layout of the store. Upon her arrival at the store that night, she realized there were not enough employees to complete the layout change. While no layout change was completed, Ms. Nguyen stayed overnight at the store with her employees. Ms. Nguyen claimed that she had no choice but to stay overnight at the store because it was unsafe to walk home and no taxis or rideshares were available.
7. After conducting a Human Resources investigation, Uniqlo decided that Ms. Nguyen had misrepresented the reasons for her overnight stay to her regional manager. Additionally, Uniqlo asserted that Ms. Nguyen was not honest during the Human Resources investigation. Uniqlo concluded that Ms. Nguyen had stayed overnight at the store so that she could more easily access a limited edition shoe release that was scheduled to happen the next morning in the shopping mall.
8. In finding that Uniqlo had just cause for the termination of Ms. Nguyen’s employment because of her major misconduct, the Director stated the following:

I find that Ms. Nguyen stayed overnight at the store for a reason other than a valid business purpose. I find that she misled [the regional manager] as to the nature of her

request in order to gain authorization to stay overnight. I find that she lied during Uniqlo's internal investigation. I find that these actions were inconsistent with continued employment, because they damaged the trust that must exist between employee and employer. I find that Uniqlo has made out its claim for just cause.

## ISSUES

9. Has Ms. Nguyen demonstrated a reasonable prospect of success in arguing that the Director:
  - i. Showed actual bias or a reasonable apprehension of bias in making the Determination?
  - ii. Made an error of law in finding that Uniqlo had just cause to terminate her employment?
10. Has evidence become available that was not available at the time the Determination was being made?

## ANALYSIS

### **Did the Director show actual bias or a reasonable apprehension of bias in making the Determination?**

11. The Tribunal has consistently and unequivocally stated that an allegation of bias must be supported in evidence: *Salvador Gomez-Borja*, 2025 BCEST 5.
12. Ms. Nguyen alleges that the Director “disproportionately” relies on evidence from Uniqlo. I disagree. The Director appropriately assessed the relevant evidence presented by both parties and arrived at a reasonable conclusion. The Director found Uniqlo's version of events to be more credible than Ms. Nguyen's.
13. Ms. Nguyen asserts that the Director “failed to adequately address the safety concerns” that caused her to stay overnight at the store. I find that the Director sufficiently responded to Ms. Nguyen's argument in the Determination when they wrote:

I am extremely dubious that the two employees, upon realizing that their assigned task for the night could not be completed as planned, would choose to spend the night sleeping at a store rather than in their own beds. There is no evidence before me as to what time Ms. [Nguyen] realized they couldn't complete the layout, but Ms. Nguyen stated that she returned to the store at 9:00 p.m. that evening after having a meal with a friend at 7:00 p.m. I do not accept that taxis and Ubers were not available by the time they realized the other employees would not be coming. An employee who wished to leave could have done so.

14. Ms. Nguyen has made the allegation of bias without providing any substantive evidence to support it. Ms. Nguyen has not adduced any evidence that would support a finding that the Director has demonstrated bias by ignoring human rights or safety issues.

15. I found no evidence in the section 112(5) record or the Determination that would support a finding that the Director had failed to observe the principles of natural justice. Ms. Nguyen was able to provide evidence and submissions in support of her complaint that were considered by the Director, and was given an opportunity to respond to the Director's investigative findings before the Determination was issued.
16. An unfavourable finding from the Director does not, on its own, amount to a breach of procedural fairness, the principles of natural justice, nor does it demonstrate bias.
17. I find that the Director did not show actual bias or a reasonable apprehension of bias in making the Determination.

**Did the Director make an error of law in finding that Uniqlo had just cause for termination?**

18. Ms. Nguyen checked off a box on the Appeal Form to indicate that the appeal was, in part, based on the ground that the Director had made an error in law. Ms. Nguyen's appeal submissions do not indicate how the Director erred in law, but instead argue against the Director's findings of fact. I interpret that the intent of her appeal submission is to argue that the Director erred in finding that Uniqlo had just cause to terminate her employment.
19. Whether Uniqlo had just cause to terminate Ms. Nguyen's employment is a question of mixed fact and law. The Tribunal is bound to defer to the factual conclusions of the Director, unless it is established that an error has been made that engages an extricable error of law: *Angela Zavediuk (Re)*, 2024 BCEST 79.
20. There is a two-part test required in the analysis of just cause: the decision-maker must be satisfied that the misconduct occurred and, second, determine if the proven misconduct is of such a nature and degree so as to justify termination: *Storms Restaurant Ltd. (Re)*, 2018 BCEST 70.
21. In assessing the first part of the test, the Director properly identified that an employer may rely on a single instance of major misconduct to establish just cause. The Director found that Ms. Nguyen had stayed overnight at Uniqlo without a valid business purpose, misled her regional manager as to the purpose of the overnight stay, and was deceitful with Uniqlo's representatives during the subsequent Human Resources investigation. I find that the Director's conclusions on these matters to be reasonable and supported by the evidence.
22. In assessing the second part of the test, the Director determined that Ms. Nguyen's actions "were inconsistent with continued employment, because they damaged the trust that must exist between employee and employer." Just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee's obligations to his or her employer: *McKinley v. BC Tel*, 2001 SCC 38 (*CanLII*), [2001] 2 S.C.R. 161. As the store manager for Uniqlo, Ms. Nguyen was in a position of trust. I agree that Ms. Nguyen's dishonesty surrounding her overnight stay at Uniqlo and during the Human Resources investigation sufficiently damaged trust to the extent that further employment was not viable. As a result, I find that the Director's conclusion on this matter is reasonable.

23. I find the Director's determination that Uniqlo had just cause to terminate Ms. Nguyen's employment was reasonable and supported in the evidence.

24. Accordingly, I find that the Director did not make an error of law in finding that Uniqlo had just cause for termination.

**Has evidence become available that was not available at the time the Determination was being made?**

25. Ms. Nguyen did not indicate that new evidence was one of the grounds for her appeal. Acknowledging that, I will still address the new evidence that was sent to the Tribunal.

26. Accompanying Ms. Nguyen's submissions were multiple credit card statements and an excerpt from a text message.

27. In *Davies et al. (Merilus Technologies inc., BC EST # D171/03)*, the Tribunal held that the onus rests with an appellant to meet a strict, four-part test before accepting and considering any new evidence:

- a. The evidence must not, with the exercise of due diligence, have been discoverable or presentable to the Director before the Determination;
- b. The evidence must be relevant to a material issue arising from the complaint;
- c. The evidence must be reasonably capable of belief; and
- d. The evidence must have high potential probative value, in the sense that it could, if believed, have led the Director to a different conclusion on the material issue

28. A failure to satisfy any one of the four parts will render that evidence inadmissible.

29. I find that the credit card statements fail the first part of that test. The credit card statements encompass the time period from October 22, 2022, to December 21, 2022. With due diligence, Ms. Nguyen could have provided those credit card statements to the Director before the Determination was made in November 2024.

30. I find that the text message excerpt fails the fourth part of the *Davies* test. The text message excerpt is not dated and does not identify who is participating in the conversation. I find that the text message excerpt has low probative value and would not have led the Director to a different conclusion on any material issue.

31. The new evidence is inadmissible.

**CONCLUSION**

32. In the absence of any evidence or argument that there is any error in the Determination, I find that there is no reasonable prospect that the appeal will succeed.

**ORDER**

33. I dismiss the appeal pursuant to section 114(1)(f) of the *ESA*.
34. Pursuant to section 115(1)(a) of the *ESA*, I confirm the Determination dated November 25, 2024.

*/S/ Warren Insell*

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**Warren Insell**  
**Member**  
**Employment Standards Tribunal**