

NOVA SCOTIA COURT OF APPEAL

Citation: *Myra v. Nova Scotia (Labour Standards Tribunal)*, 2007 NSCA 127

Date: 20071219

Docket: CA 283510

Registry: Halifax

Between:

Lucy Myra

Appellant

v.

Labour Standards Tribunal (Nova Scotia) and
Nova Scotia Power Incorporated

Respondents

Judge: Honourable Justice Linda Lee Oland

Appeal Heard: December 11, 2007

Subject: *Employment Law - Labour Standards Code (Nova Scotia), s.71
(dismissal without just cause)*

Summary: Following a lengthy investigation, Nova Scotia Power Incorporated (NSPI) terminated the employment of the appellant, an administrative assistant whose responsibilities included management of a petty cash fund. She had worked for that employer for approximately 30 years. Union members would submit voucher or meal chits, and the appellant would use the petty cash fund to reimburse them. As the cash was depleted, she would prepare an expense report with the vouchers attached and, after the report was approved by the business manager, a cheque would be issued in her name to replenish the fund. The safe that held the petty cash box and the filing cabinet that held the reports were located in a high traffic area. She was not the only employee who had the combination to the safe. Shortfalls in the amount of the fund were discovered after she had left the workplace. After the Director of Labour Standards dismissed her complaint of failure to comply with s. 71 of the *Code*, the appellant appealed to the Labour Standards Tribunal. It accepted the evidence of the

business manager in regard to the NSPI investigation. The Tribunal found that where the appellant's evidence differed from that of the NSPI witnesses, the Tribunal gave more weight to the evidence of the latter, who found them more credible than the appellant. The Tribunal decided that her termination for cause was justified by NSPI, and upheld the Director's order. The appellant appeals to this court, alleging *inter alia* that the evidence of NSPI's chief witness contained crucial inconsistencies and inaccuracies which were overlooked in the credibility assessment.

Issues:

Whether the Tribunal erred in

- (a) its consideration of the evidence and its resultant finding as to credibility;
- (b) in its finding that the appellant received cash for the vouchers;
- (c) in its application of the burden of proof;
- (d) in its finding that the grounds for dismissal put forward by NSPI amounted to just cause.

Result:

Appeal dismissed. The Tribunal made no errors in its consideration of the evidence, its findings as to credibility, nor its finding that the appellant received cash for the vouchers that met the standard of review of patent unreasonableness applicable to the fact-finding process and issues of fact. The Tribunal correctly set out the burden of proof and the applicable case law. Its application of that burden to the evidence before it, and its conclusion that her conduct constituted just cause for dismissal, did not attract appellate intervention on the standard of review of reasonableness for questions of mixed law and fact.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 12 pages.