

**Case No. 01/09/ESC**

**File No. 98315**

**IN THE MATTER OF: THE EMPLOYMENT STANDARDS CODE**

**BETWEEN:**

**CONVERGYS NEW BRUNSWICK, INC.**  
**t/a CONVERGYS CMG CANADA LIMITED PARTNERSHIP,**  
**Employer,**

**- and -**

**Robin Beaudry,**  
**Employee.**

**WHEREAS:**

1. On September 10, 2008, pursuant to Section 95 of *The Employment Standards Code*, the Director of the Employment Standards Division of the Department of Labour and Immigration, by order, dismissed the complaint by the above named Employee against the above named Employer for four (4) weeks wages in lieu of notice of termination and, in so ordering, provided the following Reasons for Decision:

Your claim has been investigated and found that you were terminated for being dishonest in your course of employment. Therefore, as per Section 62(1)(h)(iii) of *The Employment Standards Code*, notice is not required.

Therefore, your claim is hereby dismissed.

2. The Employee having disputed the above mentioned Dismissal Order, the Director of the Division, pursuant to Section 110 of the *Code*, referred the matter to the Board.
3. On April 6, 2009, the Board conducted a hearing at which time both parties appeared before the Board and presented evidence, the Employer being represented by Counsel.
4. The Board, following consideration of material filed, evidence and argument presented, made the following determinations:
  - a) the parties, during the course of the hearing, agreed that the value of four (4) weeks wages in lieu of notice, is Three Thousand Two Hundred Sixty Seven Dollars and Fifteen Cents (\$3,267.15);

- b) the only issue before the Board is whether the Employee acted in a manner not condoned by the Employer, that was dishonest in the course of her employment within the meaning of Section 62(1)(h)(iii) of the *Code*, thereby disentitling her to notice under Section 61 of the *Code*;
- c) by letter dated April 21, 2008, (Exhibit No. 6), the Employer initially terminated the employment of the Employee effective May 20, 2008, due to a loss of business, and provided the Employer, inter alia, with four (4) weeks and two (2) days' working notice;
- d) based on information received by the Employer regarding certain activities of a number of its employees, including the Employee, regarding claims being made under the Employer's Tuition Assistance Plan (Exhibit No. 10), the Employer commenced an investigation of the matter starting on Friday, April 18, 2008, and ending on Monday, April 21, 2008, which included the conducting of interviews and the taking of statements on April 21, 2008. The Employee's own Statement was filed as Exhibit No. 13;
- e) the investigation resulted in the Employer terminating the employment of the Employee on April 22, 2008, by letter of same date, for dishonesty in the course of employment (Exhibit No. 3) on the basis that the Employee had knowingly misrepresented claims for tuition reimbursement in violation of the Employer's Code of Business Conduct (Exhibit No. 15), the Tuition Reimbursement Plan (Exhibit No. 10) and the laws of Manitoba;
- f) the Employee, while acknowledging that there was a fraudulent scheme developed by at least three other employees of the Employer to wrongfully claim tuition reimbursement and to receive improper referral/solicitation fees, asserts that she was not an active participant in the scheme and that she had neither been dishonest nor intended to be dishonest in her dealings with the Employer. The Employee further asserts that the Employer waited to terminate her employment only when it decided that it no longer needed her services due to the impending closure of the Employer's offices in Brandon, Manitoba on May 20, 2008;
- g) in respect of the Employee's assertion questioning the timing of and the motives underlying the Employer's decision to terminate her, the Board accepts that the Employer's investigation was undertaken in good faith and was completed in an expeditious manner after the "scheme" was brought to its attention;

- h) the Board is satisfied that the Employee was aware of the relevant Employer policies and of the consequences that could flow from any breaches thereof (Exhibit 9);
- i) the Board is satisfied that the Employee submitted a claim for reimbursement to the Employer for Two Thousand Four Hundred Fifty Dollars and One Cent (\$2,450.01) (marked "PAID" – Exhibit 11), when the Employee, by admission, had not taken any module comprising the approved course; that the Employee filed a Certificate of Completion dated April 10, 2008, (Exhibit No. 12) and a Transcript dated April 10, 2008, showing a course grade of "A", in support of her claim, when in fact, the course was never completed. The Board accepts that the Employee anticipated that she would receive Two Hundred and Fifty Dollars (\$250.00) as her share of the Five Hundred Dollars (\$500.00) referral fee. Further, the Employee admitted that she initially advised the Employer that she has spent 24 to 48 hours completing the course which was retracted during the investigation, when confronted by the Employer;
- j) in seeking to terminate the Employee without notice, the onus is on the Employer, to establish, on the balance of probabilities, that the Employee's conduct fell within the statutory exception for dishonest conduct under Section 62(1)(h)(iii) of the *Code*. In this regard, see *Convergys Customer Management Inc. and Randy Luba et al (2005) MBCA, March 7, 2005; Leonard W. Carlson trading as Len's Auto Service –and- Richard Stickles (2006) MLB 86/06/ESC; and FCL Enterprises Co-operative –and- Kenneth Mazur (2008) MLB 215/08/ESC;*
- k) the Board is satisfied that the Employer has met its onus, on the credible evidence before the Board, and has established, on the balance of probabilities, that the Employee acted in a manner, not condoned by the Employer, that was dishonest in the course of her employment. Therefore, the Employer was entitled to terminate the Employee's employment without notice pursuant to Section 62(1)(h) of the *Code*. Accordingly, the Employee is not entitled to receive wages in lieu of notice and the appeal is to be dismissed.

**T H E R E F O R E**

The Manitoba Labour Board HEREBY DISMISSES the claim of Robin Beaudry.

**DATED** at WINNIPEG, Manitoba, this 29<sup>th</sup> day of April, 2009.

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“original signed by”

**Janet Duff**  
**REGISTRAR**

CJ:tj

**NOTES**

- 1. Appeal of board order re unpaid wages**  
**130(1)** A person who is a party to a final order of the board made under this Code in respect of a matter referred to the board under section 110 may appeal the order to The Court of Appeal.
- 2. Appeal of the Board Decision or Order to Court of Appeal**
  - a. Leave to appeal required  
**130(2)** An appeal may be taken only on a question of law or jurisdiction and by leave of a judge of The Court of Appeal.
  - b. Time for application for leave to appeal  
**130(3)** An application for leave to appeal shall be made within 30 days after the day the order is made or within such further time as a judge may allow.
- 3. Board and director entitled to be heard**  
**131** The board and the director are each entitled to be heard, by counsel or otherwise, on the argument of an application for leave to appeal and on an appeal.
- 4. Applicant to file proof of payment to the director**  
**130(4)** If a person that files an application for leave is not an employee and is required, under the order that is the subject of the application, to pay money to the director, the person shall file with the application evidence that he or she has complied with subsection 125(4).

5. Evidence of compliance with an Order of an Acknowledgment of Receipt from the Employment Standards Division indicating that the amount stated in the Order has been deposited in the "*Province of Manitoba Wages Trust Account.*" *The Employment Standards Division will only accept certified cheques, money orders or cash. Personal cheques will not be accepted unless certified. Please make cheques, etc. payable to "**The Province of Manitoba Wages Trust Account.**"*

### **REASONS FOR DECISION**

It is the policy of the Manitoba Labour Board that where a party to the proceedings is adversely affected by an Order or by a decision of the Board, within ten (10) calendar days of the date on which the Board's Order or decision was signed that party may request the Board in writing to furnish written reasons for its Order or decision. The Board then may consider such request for reasons for its Order or decision and shall notify the requesting party as to whether reasons will be provided.