

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

- by -

Allan E. Kranz
("Kranz")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	Hans Suhr
FILE No.:	98/696
DATE OF HEARING:	January 8, 1999
DATE OF DECISION:	February 5, 1999

DECISION

APPEARANCES

Allan E. Kranz	on his own behalf
Dee Kranz	on behalf of Allan E. Kranz
Martin Langthorne	on behalf of Western Scale (Prince George) Ltd.
Lydia Silich	on behalf of Western Scale (Prince George) Ltd.

OVERVIEW

This is an appeal by Allan E. Kranz (“Kranz”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated October 20, 1998 issued by a delegate of the Director of Employment Standards (the “Director”). Kranz alleges that the delegate of the Director erred in the Determination by concluding that Kranz was not entitled to compensation for length of service. Kranz further alleges that the Determination is flawed as the Delegate of the Director failed to take into account all the facts presented during the investigation. The Director’s delegate concluded that Western Scale (Prince George) Ltd. (“Western”) had established *just cause* for terminating the employment of Kranz and therefore no compensation for length of service was owed.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Kranz is owed compensation for length of service.

FACTS

The following facts are not in dispute:

- Kranz was employed by Western as a scale technician from August 17, 1989 to March 14, 1997;
- Kranz failed to complete required paperwork after returning from a job in June 1996;
- On November 10, 1996, Kranz left some equipment at a remote job site ;
- On November 15, 1996, Kranz failed to properly fold and secure the crane on a truck and subsequently, as Kranz was driving under an overpass, the crane struck the bottom of the overpass;
- On March 13, 1997, Kranz used the crane on a company vehicle to assist the business located next door to Western. During this operation, an ‘outrigger’, used to stabilize the

truck when lifting with the crane, became jammed in the extended position. Kranz drove the truck, with the outrigger in an extended position, out of the yard on onto the street and then backed the truck back into the yard again.

Western submits that in addition to the undisputed facts, that:

- On February 14, 1997 Kranz was instructed to visit 2 specific customers while on assignment in Quesnel and he failed to do so;
- On November 14, 1996 a memorandum in regard to “Paperwork Completion” was provided to all employees;
- On December 2, 1996 a disciplinary meeting was held with Kranz in regard to the incident where equipment was left at a remote work site. Kranz was provided with a “disciplinary letter” on that date;
- On December 3, 1996 a disciplinary meeting was held with Kranz in regard to the incident where the unsecured crane struck an overpass. Kranz was provided with a “disciplinary letter” on that date;
- During the December 3, 1996 meeting Kranz was clearly told that “3 times and you are out and you are on number 2”;
- On February 17, 1997 a disciplinary meeting was held with Kranz in regard to the incident of failing to visit 2 customers in Quesnel;
- On February 28, 1997 a disciplinary meeting was held with Kranz in regard to a number of issues and Kranz was requested to “change and to take the weekend to consider this matter”;

Western further submits that it is clear that they established just cause for the termination of Kranz.

Kranz submits that:

- he does not recall the specific disciplinary meetings that Western states took place;
- he did not receive the disciplinary letter dated December 2, 1996;
- he did not receive the memorandum re: “Paperwork Completion” dated November 14, 1996;
- he did not receive the disciplinary letter dated February 28, 1997;

Kranz further submits that the delegate of the Director relied upon false, misleading or incomplete information.

Kranz finally submits that in the event that the Tribunal accepts the information considered by the Delegate of the Director as true and complete, that information does not support the conclusion that Western had just cause to terminate his employment.

ANALYSIS

The burden of establishing that the delegate of the Director erred in the Determination rests with the appellant, in this case, Kranz.

Western has provided a number of “disciplinary” letters which they state were issued to Kranz. Western argues that they have established “just cause” for the termination of Kranz.

Upon reviewing those ‘disciplinary’ letters, it is noted that they state in part:

Letter dated December 2, 1996 -

“ You may consider this letter as disciplinary action and a written warning. Further instances of this kind may lead to more serious disciplinary action.”

Letter dated December 3, 1996 -

“ You may consider this letter as disciplinary action and a written warning. Upon the completion of our meeting to be held with you today, a decision regarding further disciplinary action will be made.”

Letter dated February 28, 1997 -

“ If you wish to remain employed here, you must change. Please take the weekend to consider this matter. We will meet on Monday to discuss your decision.”

Kranz agrees that he may have received the letter dated December 3, 1996 but does not recall receiving any other disciplinary letters. Kranz does not recall attending any meetings for disciplinary purposes, however he does recall in general terms that a meeting was held on March 3, 1997. Kranz argues that there is no “just cause” for his termination.

In **Stein v. British Columbia Housing Management Commission** [(1992) 65 BCLR (2d) 181] the BC Court of Appeal described the common law test for just cause in the following terms at p. 183:

Did the plaintiff conduct himself in a manner inconsistent with the continuation of the contract of employment?

In the same case, the Court of Appeal adopted the following passage from **Laws v. London Chronicle Ltd.** [(1959) 2 All E.R. 285 (C.A.)] as a generally accepted statement of the law on this point:

It is, no doubt, therefore, generally true that willful disobedience of an order will justify summary dismissal, since willful disobedience of a

lawful and reasonable order shows a disregard - a complete disregard - of a condition essential to the contract of service, namely the condition that the servant must obey the proper orders of the master and that, unless he does so, the relationship is so to speak, struck at fundamentally...

I think that it is not right to say that one act of disobedience, to justify dismissal, must be of a grave and serious character. I do, however, think (following the passages which I have already cited) that one act of disobedience or misconduct can justify dismissal only if it is of a nature which goes to show (in effect) that the servant is repudiating the contract or one of its essential conditions; and for that reason, therefore, I think that one finds in the passages which I have read that disobedience must at least have the quality that it is “willful”: it does (in other words) connote a deliberate flouting of the essential contractual conditions.

Madame Justice Southin, writing for the Court, in the **Stein** case, went on to state at page 185:

I begin with the proposition that an employer has a right to determine how his business shall be conducted. He may lay down any procedures he thinks advisable so long as they are neither contrary to law nor dishonest nor dangerous to the health of the employees and are within the ambit of the job for which any particular employee was hired. It is not for the employee nor for the court to consider the wisdom of the procedures. The employer is the boss and it is an essential implied term of every employment contract that, subject to the limitations I have expressed, the employee must obey the orders given to him.

It is not an answer for the employee to say: “ I know you have laid down a rule about this, that or the other, but I did not think that it was important so I ignored it.”

A central issue in deciding this appeal is the credibility of the evidence given by Kranz. A number of factors must be considered in assessing the credibility of a witness: demeanor, opportunities for knowledge, powers of observation, judgement and memory, ability to describe clearly what has been seen and heard, the probability of the event happening in the manner suggested [**Farnya v. Chorny** (1952) 2 DLR 354 (BCCA)].

On balance, I find it probable that the events occurred as described by Western. Kranz’ evidence was contradictory on several key points. Kranz, in his documentary presentation to the Tribunal in regard to the incident with the ‘outriggers’ states “*I neglected to*

retract the outriggers and proceeded to drive the vehicle out of the yard. As I attempted to turn right, the extended ram jammed on the curb and halted the vehicle's progress." When Kranz gave oral evidence he stated " the yard was very icy so I drove the truck out of the yard with the outriggers down as they were jammed and I was going to use the curb to help release them".

I can think of no reason why I should not accept the oral evidence of Langthorne corroborated by the documentary evidence provided.

My analysis of the oral and documentary evidence in this appeal leads me to conclude that Western had just cause to terminate Kranz' employment. I come to that conclusion for several reasons. I find that Kranz, without due regard for company property, drove the truck with the outriggers in the extended position. I also find that as a result of the meeting with Langthorne on March 3, 1997, Kranz was clearly aware that his performance had to improve or his job would be terminated. In reaching this conclusion I prefer the evidence given by Langthorne to that given by Kranz. I do not accept Kranz' evidence that he only drove the truck from the yard with the outriggers down to use the curb as an assist to raise them.

I conclude therefore that Kranz is not owed compensation for length of service.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated October 20, 1998 be confirmed in all respects.

Hans Suhr
Adjudicator
Employment Standards Tribunal