

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 -

Kevin Alexander Mills
("Mills")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 97/541

DATE OF DECISION: August 26, 1997

DECISION

OVERVIEW

This is an appeal by Kevin Alexander Mills (“Mills”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated July 4, 1997 which was issued by a delegate of the Director of Employment Standards (the “Director”). Mills alleges that the delegate of the Director erred in the Determination by concluding that Mills had been terminated for just cause by Canadian Woodworks Ltd. (“CWL”) and further that the delegate of the Director was biased in the investigation of this matter.

ISSUES TO BE DECIDED

The issues to be decided in this appeal are:

1. Did CWL terminate Mills for just cause ?
2. Was the delegate of the Director biased in the investigation of this matter ?

FACTS

The following facts are not in dispute:

- Mills was employed by CWL commencing September 9, 1991;
- On June 26, 1996, a dispute arose between Mills and a Leadhand, Mr. Bernd Lehman (“Lehman”);
- This dispute took place on the CWL’s premises after the conclusion of the shift;
- Mills was terminated from his employment on July 2, 1996.

SUBMISSIONS OF THE PARTIES

CWL states that:

- just cause exists for the termination of Mills;
- Mills has a lengthy history of aggressive and abusive behaviour towards others;
- previous (non-physical) incidents of aggressive and abusive behaviour resulted in Mills being verbally warned on several occasions, suspended and finally being required to undergo anger management counseling;

- Mills was well aware of the CWL policy with respect to “disciplinary action in the case of fighting on the job, intimidation of fellow employees by threats and other work related threats and/or physical violence towards supervisors;
- as a ‘leadhand’, Lehman is in a supervisory position;
- during the incident of June 26, 1996, Mills pushed Lehman with his chest, spit in his direction, cursed at him, threatened to kill him (Lehman) and his family;
- the abuse by Mills continued for 20 - 30 minutes until Lehman managed to leave in his vehicle;
- Mills then began to verbally abuse other employees who had witnessed his altercation with Lehman;
- both Lehman and Mills were suspended pending investigation of the altercation by CWL;
- Lehman received a suspension for his comments to Mills;
- due to the severe nature of Mills’ conduct, he was terminated on July 2, 1996.

Mills states that:

- other employees who had been made aware of his counseling for anger management continually attempted to provoke him into losing his temper;
- he fully acknowledges his behaviour of the evening of June 26, 1996 and realizes that he should not have reacted in such a manner;
- Lehman provoked the altercation by referring to Mills as a “lazy ass” in a conversation with another employee;
- in light of the provocation of Lehman’s comments and Mills’ length of service with CWL, he should be entitled to compensation for length of service;
- the delegate of the Director did not properly investigate to determine the truth of what happened during the altercation of June 26, 1996.

ANALYSIS

In determining whether CWL had ‘just cause’ to terminate Mills I must consider a number of factors with regard to the circumstances which gave rise to the termination. The factors which are, in my view relevant to this matter are:

1. Did Mills engage in an act of misconduct which was worthy of discipline ?

There is no doubt that the act of verbally and physically assaulting a person in a supervisory position is worthy of discipline.

2. Was Mills aware that misconduct of this nature was not acceptable behaviour and contrary to CWL's Policies ?

The previous incidents of aggressive and abusive behaviour by Mills clearly indicate that Mills was or should have been aware that this type of misconduct was not acceptable.

3. Did CWL properly investigate the altercation and invoke discipline to all of the parties involved ?

The evidence clearly shows that CWL interviewed all employees who had witnessed the altercation and, after having due regard to the employment records of both Lehman and Mills, administered discipline to both.

4. Was Mills aware that his continued employment was in jeopardy should he engage in aggressive or abusive behaviour ?

Mills had been put "on notice" that further incidents of aggressive and abusive behaviour would result in termination. Furthermore, Mills was aware of the company policies in regard to threatening, intimidating or abusive behaviour.

Although some 2 years had passed since Mills' previous incidents of misconduct and the resultant counseling, due to the severity of this incident, especially the physical aspect and the threats against Lehman who was in a supervisory position and the threats against Lehman's family, the termination of Mills, in my view, was an appropriate response by CWL in light of all the circumstances.

I conclude that CWL had 'just cause' to terminate the employment of Mills and therefore Mills is **not** entitled to compensation for length of service pursuant to Section 63 of the *Act*.

CWL provided information with respect to Mills conduct while employed at another employer subsequent to his termination from CWL, however, in my view such information is not relevant to this matter.

With respect to issue No. 2, the alleged bias of the delegate of the Director during the investigation, Mills did not provide any evidence to substantiate these allegations. I am satisfied that based on the evidence provided, the delegate of the Director conducted herself in a professional manner and carried out her duties in the manner contemplated by the provisions of the *Act*.

For all of the above reasons, the appeal by Mills is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated July 4, 1997 be confirmed in all respects.

Hans Suhr
Adjudicator
Employment Standards Tribunal