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

- by -

Louis Regiudel

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	Lorne D. Collingwood
FILE NOS.:	98/698
DATE OF HEARING:	February 12, 1999
DATE OF DECISION:	March 5, 1999

DECISION

OVERVIEW

Louis Regiudel appeals, pursuant to section 112 of the *Employment Standards Act* (the "*Act*"), a Determination by a delegate of the Director of Employment Standards dated October 28, 1998. The Determination is that S & R Sawmills Ltd. ("S & R") owes Regiudel neither money for missed lunch breaks, nor compensation for length of service.

ISSUES TO BE DECIDED

The sole matter to be decided on appeal is the matter of whether or not compensation for length of service is owed. In that regard, the delegate considered the matter of whether or not Regiudel was constructively dismissed and decided that he was not. The delegate explained that so far as she could see, the conduct and behaviour of the employer was not so serious or outrageous that a reasonable person, in the circumstances, would conclude that they had no option but to resign.

Regiudel on appeal again claims that a particular foreman caused him such stress that he was left with no choice but to quit.

FACTS

Regiudel worked almost 18 years for S & R.

In filing his Complaint, Regiudel alleged that S & R punished him by changing his hours of work. And he further claimed that Marvin Jansen, a foreman, picked on him, bullied him and was abusive to the extent that that his health was adversely affected by the stress of working for S & R and he was forced to quit.

The delegate states in the Determination that she prefers the employer's explanation for the change in Regiudel's hours of work, over that of Regiudel. The change was in May of 1997 and it called for Regiudel to start work an hour later, at midnight instead of 11:00 p.m.. The employer says that was done so as to provide for overlapping shifts by Regiudel and his supervisor and provide the men with a chance to speak to one another, directly, instead of just through notes as they had been doing. And the employer said that the new hours of work were really not all that new in that Regiudel had, seven years ago, worked those very same hours.

Regiudel presented the delegate with a memo from his doctor, one dated March 22, 1998. In that note, it is said that Regiudel left his job because it was causing him excessive stress. The delegate accepted that Regiudel found the foreman rather rude and unpleasant. And she accepted that health problems and the foreman's rudeness and unpleasantness may have

been contributing factors in Regiudel's decision to quit. But she goes on to conclude that it was not for those reasons alone that the employee quit, and that the foreman was not so rude and unpleasant that it left Regiudel with no option but to resign. In giving reasons for the Determination, the delegate explains that Regiudel failed to advise his employer of his heart problem, and that the only explanation that he gave his employer for his resignation was that he wanted to move close to family, and pursue job prospects, in Alberta. The delegate also appears to discount the physician's opinion in that she states that it was written a month after Regiudel quit his job.

On appeal, Regiudel claims only that Jansen made his work life so miserable that his health was adversely affected and he was forced to quit. He says that he has now suffered a heart attack. And he says that others were also treated badly by Jansen. But in making his case, he fails provide any evidence which challenges the Determination in any important respect. No one other than Regiudel steps forward to say that they were treated badly by Jansen. And while Regiudel submits copies of some of the notes that Jansen left for him, they do not on their surface indicate excessive belligerence by Jansen or that there is anything at all untoward. Nor am I shown or told of the circumstances in which the notes were issued, such that I might decide whether or not the notes are unacceptable given the context in which they were issued. There is little else in this case beyond the opposing statements of the parties.

In this case, the Tribunal's Registrar set a date for a hearing in the appeal, the 12th of February, 1999, as an aid to establishing the credibility of witnesses. Regiudel, as the appellant, was of course notified of the hearing. Yet when I arrived at the appointed time of the hearing, I met only the employer and the employer's counsel. I kept the employer waiting for Regiudel but he never did arrive for his hearing. And nothing more was been heard from him. The Tribunal last heard from the appellant by fax, one sent from Alberta on the 10th of February.

ANALYSIS

This is a case where the appellant, without explanation, fails to attend the hearing set in the appeal. Yet it is unlikely that the appeal has been abandoned. I doubt that Regiudel would have made the submission that he did on the 10th and then abandon his appeal.

The Tribunal may dismiss appeals that are frivolous, vexatious, trivial or not brought in good faith (Section 107 of the Act). Where the appellant demonstrates a lack of real interest in an appeal that is reason to dismiss the application as frivolous, vexatious, trivial or not in good faith [Richard Malley operating as Richard Malley Transport, BC EST #D367/98], as is the failure of the appellant to challenge the substantive facts and reasons of a Determination [Number 7 Enterprises Ltd., BC EST #D175/96].

I am prepared to believe that the appellant's failure to attend the hearing does not in this case demonstrate such a lack of interest in the appeal that it should be dismissed. The appellant's absence is likely explained by what he says is the current state of his health, his

move to Alberta, and what I expect is his limited understanding of how the Tribunal operates. He is, after all, a person who works with machinery in a mill and knows his way around a chip loader, not the law and the ways of tribunals. Fairness demands that some allowance be made for that. And it leads me to consider his written submissions against that of his former employer. Yet when I do that, I am still led to the conclusion that the appeal is one that should be dismissed as frivolous, trivial, and not in good faith, if not vexatious. As noted above, as Regiudel presents matters to me through his written submissions, he simply fails to challenge the Determination in any important respect.

I do not doubt that Jansen made Regiudel's work-life somewhat miserable. And, like the delegate, I am also prepared to accept that Regiudel found Jansen rude and unpleasant, and that his distaste for Jansen was a factor in his resignation, as was the deteriorating state of his health. But the question that I must answer is, Did the supervisor create, through conduct and behaviour which is devoid of legitimate purpose, such an intimidating, humiliating, or otherwise hostile work environment that he forced Regiudel to resign? Regiudel has not presented any evidence which allows for a decision in the affirmative.

In summary, Regiudel complains of the Determination issued October 28, 1998 but he fails to present evidence in clear support of what he alleges and, as such, challenge the Determination in any important respect. The appeal is for that reason, and pursuant to section 107 of the Act, dismissed.

ORDER

I order, pursuant to section 115 of the Act, that the Determination dated October 28, 1998 be confirmed.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal