

**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 -

Slater Iron & Salvage Company Ltd.  
("Company")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Richard S. Longpre

**FILE NO.:** 1999/14

**DATE OF HEARING:** March 26, 1999

**DATE OF DECISION:** April 14, 1999

**DECISION**

**APPEARANCES**

David Slater	for the Company
Cliff Ferguson	for the Company
Jonathan Waller	Counsel for John Clark
John Clark	Complainant

**OVERVIEW**

This is an appeal by the Company pursuant to Section 112 of the *Employment Standards Act* seeking review of a Determination by a delegate of the Director of Employment Standards, dated December 17, 1998. The delegate decided that the Company had terminated the employment of the complainant, John Clark, without just cause. The delegate awarded Clark a total of \$3,391.41, including wages, vacation pay and interest.

The Company appealed the Determination on the basis that Clark was not terminated. It argued that Clark voluntarily quit his employment.

**ISSUE TO BE DECIDED**

Did Clark quit his employment with the Company or did the Company terminate him without just cause?

**FACTS**

David Slater owns and operates the Company. John Clark had worked for the Company since 1993. On Monday, September 8, 1998, Slater talked to Clark about work that Clark had not performed the previous Friday when he had been in charge of the shop. Clark agreed that he had not done the work. Clark had wanted to discuss an incident on the Friday when an employee had injured a finger. Slater's comments during their discussion left Clark very angry. Clark said that it was one of the worst tirades he had experienced working at the plant. Slater acknowledged that it was not unusual for him to get angry with his employees and to express that anger in graphic terms. Clark and Cliff Ferguson, another employee at the shop, agreed that after Slater's statements, things normally settled down and everyone returned to work.

Clark usually drove to work with Ferguson. They normally arrived before 7:00 a.m. and opened the shop. On Tuesday, September 9, Clark was a few minutes late in picking up Ferguson. Ferguson said that during the drive to work, Clark told him that he intended to talk to Slater. He was upset with how rude Slater had been to him the day before. Clark

explained that he had had very little sleep that night. They arrived at the plant at approximately 7:20 a.m.

Clark was in the lunch room with Ferguson getting ready for work when Slater walked in the room. Clark told Slater that he wanted to talk to him about the injury to the employee's finger from the previous week. From both their accounts, the conversation degenerated very quickly. At the hearing, Slater was adamant that he never told Clark that he was fired. Clark agreed. Clark said that Slater told him to "f--- off" and he had no doubt that he was being fired.

A few days after the conversation, Clark spoke to Rodney Lee, the Company's accountant. Clark told Lee that he believed that he had been fired. Although it was suggested to him by Employment Standards, Clark never contacted Slater to discuss with him the possibility of returning to work. Clark said that after the final incident he was very hesitant about talking to Slater.

## **ANALYSIS**

As noted in the delegate's Determination, the conversation between Slater and Clark had been very heated. The delegate's Determination went on to read:

When Clark left after the argument, he acted as if Slater had terminated his employment. Clark also indicated to Lee that he believed that Slater had terminated his employment. Based on the balance of probabilities I have determined that Slater terminated Clark's employment. (p.3)

The Determination set out the evidence of Ferguson. Ferguson gave the same evidence at the hearing. The Determination reads:

Cliff Ferguson stated that he was not present on September 8, 1998 when Slater and Clark had the argument. Clark picked Ferguson up from the skytrain on September 9, 1998. Ferguson stated that Clark said he was upset with Slater but did not go into any details. Ferguson stated that Clark did not seem overly upset during his drive into work or did he indicate that he was about to quit. Ferguson was present during the argument between Clark and Slater. Ferguson stated that he could not remember if Clark said "I quit" or "I am leaving". Ferguson stated that he heard Clark say "I am fed up. I can not take it anymore". Ferguson stated that he did not hear Slater fire Clark although he may have said "go if you want to". Ferguson said that Clark gave the keys to Slater and left.

In cross-examination, Ferguson explained that he had been sitting in the room watching Slater and Clark argue. He said that that he could not recall if Clark said "I quit" or "I am leaving". He insisted, however, that Clark said one of these phrases and that it was clear to him that Clark quit. He was sure that Slater did not terminate Clark

Clark's counsel argued that Ferguson's evidence may have been influenced by Slater's presence at the hearing; he was still employed by the Company. A number of questions were asked Ferguson that addressed this point. He answered them in a most straight forward manner. Ferguson emphasized that he had given these statements to the delegate shortly after the events and that they were accurate. His evidence at the hearing was consistent with the delegate's review of his evidence.

**The delegate made no reference to Ferguson's evidence in reaching her conclusion. Ferguson's evidence can not be ignored in deciding, on the balance of probabilities, that Slater terminated Clark's employment. Further, Employment Standards suggested that Clark talk to Slater about whether he had been fired; talking to Lee was of no point. Clark did not have that conversation with Slater.**

Clark started the September 9 discussion and Slater responded. It became very heated. I question whether either of them accurately remembers what the other one said. Clark acknowledged this point in cross-examination. Ferguson was the only one who listened calmly to what they both said. He had no doubt that Ferguson quit. I accept his evidence.

**ORDER**

Pursuant to Section 115 of the *Employment Standards Act*, the delegate's Determination dated September 17, 1998 is canceled.

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**Richard S. Longpre**  
**Adjudicator**  
**Employment Standards Tribunal**