

**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-

Nelson Ready Mix Concrete Ltd.

-of a Determination issued by-

The Director of Employment Standards  
(the “Director”)

<b>ADJUDICATOR:</b>	Fernanda Martins
<b>FILE NO.:</b>	1999/4
<b>DATE OF HEARING:</b>	April 12, 1999
<b>DATE OF DECISION:</b>	June 11, 1999

## DECISION

### APPEARANCES

Hubert Albert McRann for the Appellant

Kenneth Allan Ricalton on his own behalf

Ed Wall for the Director of Employment Standards

### OVERVIEW

This is an appeal by Nelson Ready Mix Concrete Ltd. (“Nelson Ready Mix”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”). The appeal is from the Determination issued by the Director of Employment Standards (the “Director”) on December 11, 1998. The Director found that the employer did not show that it had just cause to dismiss the complainant.

Mr. Ricalton was employed by Nelson Ready Mix from July 1993 to June 4, 1998. The employee was terminated without written notice.

Nelson Ready Mix gave the following as reasons for making this appeal:

Nelson Ready Mix Concrete Ltd. is appealing this determination on the basis that errors were made in the findings of the facts.

A hearing was held on April 12, 1999 in Nelson, BC at which time evidence was given under oath by H. A. (Bud) McRann, Mike Schoonhoven and Ken Ricalton.

### ISSUES TO BE DECIDED

This appeal requires me to decide whether the Director erred in finding :

Mr. Ricalton to have been discharged without just cause; and  
that he was entitled to compensation for length of service.

## **FACTS AND ARGUMENTS**

### **The undisputed facts are:**

Mr. Ricalton had been employed by Nelson Ready Mix since July 1993, until June 4, 1998 when he was dismissed. Mr. Ricalton was the shop foreman in the pre-cast concrete shop where he supervised one to two employees in all aspects of the construction of pre-cast concrete products. His duties involved working with those employees preparing forms for concrete placement, placement of the concrete and stripping forms for the final product.

Mike Schoonhoven was Mr. Ricalton's supervisor.

Bud McRann became the general manager in early March , 1998.

There was a tense atmosphere in the work environment that was not dissipating. Lloyd Johnson was the foreman in the mechanic shop and there was some history of acrimony between Mr. Ricalton and Mr. Johnson. There was also tension between the employees of the two shops.

In the determination the Director's delegate concluded:

It appears the employer is relying on a single act of misconduct or insubordination - the argument with Mike Schoonhoven - as the cause for the dismissal. Even though Schoonhoven states that the complainant "blow(s) off the handle all the time" there is no description of other specific past events that were the subject of discipline for insubordination or misconduct. As Schoonhoven himself describes the June 4 meeting as an "argument," it is probable that aspects of provocation exist. Furthermore, the complainant appears to be a long-term employee who by all accounts was reasonably effective in his job. The argument in question did not have an impact on the employer, its employees or its customers. Nor can it be said that this argument undermined the employment relationship to the point where the complainant and Schoonhoven could not longer work together.

### **Nelson Ready Mix's Position**

It is the appellant's position that Mr. Ricalton was dismissed with cause. The employer argues that the finding of fact by the Director that a single act led to the dismissal on June 4, 1998 was incorrect. In its materials to the Director, letters dated September 4, 1998 and June 4, 1998, advise of a number of incidents which took place prior to the dismissal. The single act on June 4, 1998 did not stand alone. There had been previous incidents and a lack of desire by Mr. Ricalton to improve relationships with fellow employees. The employer also submitted that Mr. Ricalton could not take direction from his supervisors or he would ignore it altogether which made it hard to carry out the job.

The employer set out in its reasons for appeal the following:

The Director's delegate states that "the employer is relying on a single act of misconduct or insubordination --- as the cause for the dismissal." where in fact the following information was included in our response to the complaint from Ken Ricalton.

1. page 2 - letter of September 4, 1998, to Ed Wall, Industrial Relations Officer -- this letter makes reference to "A few minor incidents---" "A very heated verbal altercation---", "--- left the meeting angry and making threats---", "A number of issues continued--", "Transit Mixer drivers were avoiding dealing---", and "This period of tension resulted in the letter of May 6, 1998."

The employer also argued that the director erred in finding that Mr. Ricalton's conduct did not have impact on other employees. Anger and abuse occurred too many times not to have impact.

In its reasons for appeal the employer set out that:

As Mr. Ricalton was dismissed at this time there was no opportunity to determine the affect of this argument but Mr. Ricalton's behavior leading up to his dismissal would not have helped an already precarious relationship between Ken, the employer and some of its employees. Mike Schoonhoven's letter of June 4, 1998 makes reference to Ken's reaction to instruction from management to the point of ignoring his supervisor when he was spoken to. The employment relationship had been deteriorating for some time so the manner of this argument would have made it impossible for Ken and Mike to work together any longer.

In his sworn testimony, Mr. McRann stated that:

- He started at Nelson Ready Mix in March 1998 to replace Gordon Shannon. He discussed the employees, the equipment and the atmosphere with Mr. Shannon. He had been told that there was tension between the staff in the precast shop and the staff in the mechanical shop and transit drivers.

- He soon recognized tension, mostly about petty things between the mechanic shop and the precast shop by observing verbal altercations and body language.

-These observations gave rise to Mr. McRann speaking to Ken Ricalton and Lloyd Johnson about improving their relationship. They were asked to approach him if further difficulties arose or if they needed his help but neither approached him.

-On April 8, 1998 while Mr. McRann was away, there was an incident in the pre-cast shop which involved an extension cord connected to a drill being pulled by Lloyd Johnson. As a result, Mr. Ricalton was hit by the drill. A loud and abusive argument took place between Mr.

Johnson and Mr. Ricalton. Mr. McRann was advised by Mike Schoonhoven regarding the incident. Mr. McRann advised Mr. Johnson and Mr. Ricalton that there would have to be improvement as their behavior was too disruptive. He reviewed what had happened that day and then wrote a letter dated April 23, 1998 to both parties. The letter addressed to Mr. Ricalton was entered into evidence:

Dear Ken:

RE: APRIL 8, 1998 INCIDENT

I write the following as confirmation of the meeting between you, Lloyd and myself on April 8, 1998.

Our meeting was the result of the verbal altercation that occurred (sic) between yourself and Lloyd on April 8, 1998, in the Precast shop. I met with you individually and then followed up with the meeting between the three of us. My understanding from this meeting is there exists a personality conflict that is the result of certain events that occurred (sic) in the past. Although personality conflicts are human nature, they are controlled by your individual desire to live and work in a harmonious environment. You both hold key positions in our Company and incidents of this nature not only affects your work itself, but also your fellow workers. Outside your hours of work I cannot influence your desire to set aside your differences but I must advise you that those differences cannot and will not be tolerated in the work place. Further incidents of this nature could result in disciplinary action or dismissal.

Our meeting ended with the understanding that every possible effort will be made to put aside your differences and work towards an improved work environment.

It is worth remembering that on an average we spend more awake time with our peers than our family members -- why spend it in conflict?

I look forward to your full cooperation in this matter.

-On April 23, 1998, Mr. McRann met with Mr. Ricalton and Mr. Johnston to discuss the letter and warned them both that this conduct could result in discipline or dismissal.

-The meeting did not go well. Mr. Ricalton was angry and verbally abusive. Mr. McRann advised them that the problems would have to stop and that he needed agreement that there would be improvement. He also advised them that if there were further problems then they should approach him but neither did.

-Mr. Ricalton's way of dealing with problems was to get angry. Sometimes he was all right but he usually felt angry and picked on.

-Over the next while small things continued to happen. Mr. Ricalton continued to take exception to direction or instruction and would become angry or surly.

-On May 5, 1998 Mr. McRann toured the pre-cast shop and found it to be a "real mess". There had been a problem keeping it safe with tripping hazards everywhere. He spoke with Mike Schoonhoven about dealing with it by letter so that there would be no confusion.

-On May 6, 1998 a letters regarding the condition of the shop were issued to Mr. Ricalton and to Shaun Jensen by Mr. Schoonhoven. Mr. Schoonhoven told Mr. McRann that Mr. Ricalton crumpled the letter and left in his vehicle. The letter addressed to Mr. Ricalton was entered into evidence and it stated:

Attention Mr. Ken Ricalton

Re: Conversation 7:30 A.M. regarding Shaun Jensen

I write the following letter as confirmation of the conversation between you and myself on Wednesday May 6, 1998.

Our meeting was to discuss the on going problems with tidying up the Precast shop to keep the shop in a clean and SAFE fashion. It has been discussed with you numerous times that you are responsible to delegate the responsibility of looking through the shop to make sure everything is cleaned up by the end of the day. One day someone may trip and fall seriously injuring themselves. Safety is of the utmost concern to the company so this problem must be dealt with once and for all. Because you and your co-worker Shaun Jensen choose to work the same shift ending the day at the same time choosing to be off work in the mid afternoon, we don't get the coverage in the precast shop at the end of the day. It has also been discussed that if 15 minutes of overtime is required to clean the shop, IT MUST BE DONE. If we can not resolve this problem we will be forced to stagger all start times, coffee times and lunch times.

In my conversation with Shaun, he was reminded that he is to respect you as the Shop Foreman. Disciplinary actions were discussed with him and then conveyed to him by letter of reprimand. Please try your best to help me control this situation as this safety problem is of extreme importance.

Thank you for your full and immediate cooperation in this matter.

-He tried to compliment Mr. Ricalton when things were done well so that he would not feel "picked on".

-He suggested to Mr. Ricalton one morning that it would help to say "good morning" and the response was that he was not getting paid to do that.

-Mr. Ricalton did not behave this way all the time as there were times when he tried to work on things but it was short term.

-On June 4, 1998 things came to a head which led to the letter written by Mr. Schoonhoven that day dismissing Mr. Ricalton. Mr. McRann was not there to observe the incident but on return to the work site was told by Mr. Schoonhoven that he had dismissed Mr. Ricalton. Mr. McRann went out to speak to Mr. Ricalton but Mr. Ricalton was angry and verbally abusive. Mr. McRann tried to calm him down but returned to his office when he failed to do so. Mr. McRann heard a crash and was concerned about what Mr. Ricalton might be doing in his frame of mind and returned to the shop where he found that Mr. Ricalton had just dropped his own stereo while packing up his things. He said he was further verbally abused by Mr. Ricalton so he left. Mr. Ricalton left shortly afterwards.

- Directly after this incident he called Mr. Ricalton's home and spoke with Mr. Ricalton's wife as Mr. Ricalton had not reached home yet. Mr. McRann asked her to let her husband know that he could go into work on Monday and speak with Mr. McRann. He did go in and they discussed the situation. Mr. Ricalton appeared to believe that Mr. McRann would reverse the decision to dismiss him but Mr. McRann advised him that he had put him in a position where he could not reverse the decision.

### **Mr. Schoonhoven's Evidence**

In his evidence, Mike Schoonhoven stated that:

-The atmosphere in the precast shop and the mechanic shop was tense. There were problems with Ken Ricalton, Lloyd Johnson and other drivers. There were "pranks" between Ken and Lloyd. Most of the problems were "petty". Mr. Ricalton was upset by the situation and approached Mr. Schoonhoven. There were problems with safety. Tools were left in the way in the pre-cast shop which is one of the access routes to the mechanic shop. Mr. Johnson moved a mold that was in the way and painted a line on the floor to keep things behind the line. Another incident which took place was when someone took nylon tie straps to chains on the garage door to prevent it from opening. This upset Mr. Ricalton a great deal. Mr. Ricalton complained of the pranks but he played his own. Two or three times a day he would move a locker out into the walkway.

-The tension in the pre-cast shop started between a former employee named Dave Sabo and Mr. Johnson. Mr. Ricalton was Dave's friend. When Dave was fired, Mr. Ricalton believed that there had been foul play.

-There had been tension prior to Dave's termination. Mr. Schoonhoven had approached Mr. Ricalton about time spent conversing with Dave about Dave's problems. Mr. Ricalton was upset by this and claimed that he was being placed in the middle. Things became worse after Dave was terminated.

-As Mr. Ricalton's immediate supervisor, he gave out a daily work schedule. Sometimes the instructions were given over a radio phone which was carried by another employee who would

relate the instructions to Mr. Ricalton. Mr. Ricalton was upset by this.

-On another occasion he approached Mr. Ricalton during a coffee break regarding work which needed to be done and he felt that Mr. Ricalton's response of "done Mike" with a thumbs up gesture was sarcastic and made Mr. Schoonhoven feel "small" in front of the other employees.

-On another occasion he approached Mr. Ricalton with instructions and Mr. Ricalton had his back turned and Mr. Schoonhoven had to ask if he had been heard and Mr. Ricalton just walked away.

-On another occasion Mr. Ricalton asked him to speak outside and asked if Mr. Schoonhoven was unhappy with him. The discussion got very heated and Mr. Ricalton asked if he was being fired to which Mr. Schoonhoven replied "no" and that he should go home. Mr. Schoonhoven was left "feeling like a molecule".

-Mr. Ricalton's responsibility as foreman was to see what had been done by the other employees in the shop. Mr. Schoonhoven asked him to solve the problem regarding safety and Mr. Ricalton became angry and blamed the other employees. Mr. Ricalton and the other employees would clash over this and finally Mr. Schoonhoven approached the other employees and took Mr. McRann to review what was unsafe and unclean. He instructed the other employees to clean up the shop. After this, Mr. Ricalton approached Mr. Schoonhoven angry that he had been dealing with the employees directly.

-There had been many small and petty arguments which were usually cleared up but large ones seemed to stick around.

-Regarding matters between Mr. Johnson and Mr. Ricalton, most were not of consequence. There were a lot of little of things which were hard to deal with because they were so small.

- Mr. Schoonhoven was not present during the incident involving the drill hitting Mr. Ricalton on the head but he spoke with Mr. Johnson and believes what happened was that Mr. Johnson was angry that the cord was in the way and pulled it. Mr. Ricalton was angry that he was hit in the head. Mr. Ricalton was very upset when he spoke to Mr. Schoonhoven and asked if he was going to do anything about it. Mr. Schoonhoven spoke to Mr. Johnson who told him that he yanked on the cord because it was unsafe and so Mr. Ricalton would have to go find it. He was not sure how the drill hit Mr. Ricalton in the head. While Mr. Schoonhoven was speaking to Mr. Johnson, Mr. Ricalton came in and told Mr. Johnson that he was not afraid of him. Mr. Schoonhoven could not control the situation.

-Mr. Johnson had on another occasion picked up a basket which was in the walk way and threw it to make a point.

-There were things going on from both sides and sometimes it would explode into large arguments.

-On June 4, 1998, at 7:00 a.m., Mr. Schoonhoven arrived at work and was advised by Mr.



Johnson and another employee that a wooden mold had been left leaning against a mirror on a newly painted truck and that a truck had been backed into a steel mold which resulted in the bending of a hydraulic hose on the truck. Mr. Schoonhoven called Mr. Ricalton to go out and showed him these things. Mr. Schoonhoven asked Mr. Ricalton "What's going on here? This is bullshit." Mr. Ricalton "lost it" and said "Big fucking deal, I just nudged it ." Mr. Ricalton said that "Those assholes put you up to it." Mr. Schoonhoven was not angry or belligerent until Mr. Ricalton got angry but he did not yell. Mr. Ricalton then went back towards the shop and was trying to curb his tongue. Mr. Schoonhoven stopped and asked him what he wanted to say. He asked if there was a problem. Mr. Ricalton responded "yes". Mr. Schoonhoven told him that if he did not like how the place was run that he knew where his truck was. Mr. Ricalton then asked if he was being fired. At this point Mr. Schoonhoven told him that he was fired.

- He could not continue working with Mr. Ricalton because he had no credibility left. Mr. Ricalton made it impossible to rectify the situation. His sarcasm was turning Mr. Schoonhoven into a laughing stock. Mr. Ricalton disliked him so much that Mr. Schoonhoven couldn't speak to him.

**In cross examination by Mr. Ricalton, Mr. Schoonhoven stated that:**

-There had been pornography placed in the locker but that no one admitted to having put it there.

-The extension cord which Mr. Johnson yanked was permanently anchored to the outlet.

-That pranks were directed at Mr. Ricalton, though not all the time.

**In cross examination by Mr. Wall, Mr. Schoonhoven stated that:**

-On June 4, 1998 he did not intend to fire Mr. Ricalton. He hoped Mr. Ricalton would come around but Mr. Ricalton would not let him do his job.

-He fired Mr. Ricalton because of safety issues. He was thinking on the way back to the shop after he had advised Mr. Ricalton regarding the problems with the truck and when he saw Mr. Ricalton "steaming", he said "if you don't like it here you know where your truck is parked".

-This argument was the one that prevented them from working together anymore because there were witnesses. However, he could not remember if there were witnesses as his back was turned but he thought that another employee had walked by.

-Mr. McRann required Mr. Schoonhoven to write letters for whatever situation might arise. He did not like passing out letters as it made things look worse than they were.

-When arguing with Mr. Ricalton he would sometimes raise his voice and a couple of times there were full blown screaming matches but he usually kept his cool.

-With regard to the contents of the April 23, 1998 letter, Mr. Schoonhoven was not aware that if Mr. Johnson or Mr. Ricalton “flipped out” they would be dismissed. He did not understand that Mr. Ricalton’s job was in jeopardy if he “flipped out”. He did not believe that Mr. Ricalton knew he would be fired if he “flipped out” but that he would have known that he was getting deeper into trouble.

-With regard to the June 4, 1998 incident, Mr. Schoonhoven was not aware that Mr. Ricalton knew he would be fired if he “flipped out”.

-When asked if he fired Mr. Ricalton for provoking him he stated that there had been too many situations one after another. He asked himself “How much of this do I have to put myself through. I wish it would just go away.” He could not believe that Mr. Ricalton was asking if he was being fired.

### **Mr. Ricalton’s Position**

Mr. Ricalton submitted that he believes that he was dismissed for a single act of misconduct or insubordination. He was given no warning related to the letter written on June 4, 1998. He had been provoked by Mr. Schoonhoven and Mr. Johnson numerous times over unrelated issues and was provoked by Mr. Schoonhoven on the day he was terminated. The facts used by the employer in its submissions to the Tribunal dated January 4, 1999 all refer to unrelated incidents. He submitted that the only threats which he ever made were to go to Labour Relations and that the truck drivers and most employees were and still are good friends of his. He submitted that the reason it appeared that he did not want to improve the situation with Mr. Johnson was because Mr. Johnson would simply lie when confronted by Mr. Schoonhoven or Mr. McRann.

Mr. Ricalton introduced a letter written by a co-worker which had not been available to the Director nor to the employer prior to the hearing. The employer did not object to the letter being introduced into evidence. On further consideration however, I find that I can not allow the contents of this letter to be considered as part of the evidence as the writer was not present at the hearing to respond to any questions about the letter.

Mr. Ricalton testified :

-That he loved doing the work he was doing at Nelson Ready Mix and was commended by his supervisors during the five years he was employed there. However, it became a difficult place to work as there was a lot of tension. This tension started between Mr. Johnson and another employee who was Mr. Ricalton’s friend, when Mr. Johnson had an affair with the other employee’s wife. This other employee had also tried to unionize the workplace and Mr. Ricalton was in support of this. When the other employee left Nelson Ready Mix, he started a competing business and Mr. Ricalton supported his friend’s efforts.

Mr. Ricalton approached Mr. Shannon numerous times over the difficult work situation. He called three staff meetings to discuss the name calling and harassment involving pornography. These incidents all involved Mr. Johnson.

Mr. Ricalton submitted that the letters submitted by the Appellants are not related. The letter dated May 6, 1998 concerned another employee named Shaun Jenson and one dirty trowel having been left out. He submitted that the letter was written to create evidence against him to get him out of the company. The letter dated April 23, 1998 referred to a separate situation. He was “furious” because incidents such as these were always happening and were never resolved by Mr. Schoonhoven. Mr. Ricalton denied that he had threatened Mr. Johnson with physical harm rather he had threatened to go to the Employment Standards Branch. He had gone there a couple of times already because the problems at work were not being dealt with.

Mr. Ricalton felt that he was provoked into responding as he did the day he was terminated. He stated that he had not left the mold leaning on the truck and was at a loss as to what to do about it. He stated that the truck which Mr. Schoonhoven had pointed out having a crimp in its hose had to be backed up as tight as possible because there was only one outrigger to unload. He felt that these incidents were drawn to his attention to get a rise out of him as it was Mr. Johnson who had brought Mr. Schoonhoven’s attention to them. Mr. Schoonhoven was not calm during the exchange. He was yelling at him that this was “bullshit”. Mr. Ricalton felt provoked.

During cross examination, Mr. McRann sought to introduce evidence that Mr. Ricalton was having difficulties with his current employer. I find that this is not relevant to the question of whether he was terminated properly by Nelson Ready Mix.

## ANALYSIS

The first matter that needs to be addressed is whether the Appellant is introducing evidence which was not disclosed to the Director’s delegate at the time of the investigation. The Tribunal has previously decided that it will not allow an appellant to do this. (*Tri-West Tractor Ltd.* BCEST D268/96 and *Kaiser Stable Ltd.* BCEST D058/97). Mr. Wall raised the concern that some of the incidents described at the hearing were not related to him during the investigation. The employer’s response to this was that in its letter addressed to the Director dated September 4, 1998, during the investigation, it had set out that “A number of issues continued to arise in the pre-cast shop over a period of time that always seemed to end in Ken becoming very angry.” The Appellant’s ability to advance its position that it was not just a single incident that led to Mr. Ricalton’s dismissal rests in part on this submission.

I find that in this case this evidence is admissible. I find that the Director had the opportunity to pursue this information during the investigation even if it was not offered to him in detail. This was not a case of the Employer refusing to participate or cooperate in the investigation. The Employer did in fact indicate that “a number of issues continued to arise”. The Director did consider more than just the last incident on June 4, 1998 which ended with Mr. Ricalton’s dismissal. The Determination does refer to “a verbal altercation between Lloyd Johnson and the complainant.” The delegate states later in the determination “ Even though Schoonhoven states that the complainant “blow(s) off the handle all the time” there is no description of other specific past events that were the subject of discipline for insubordination or misconduct.” I am not

finding that the Director erred in finding these incidents unrelated, rather, the Director's delegate could have sought clarification of these statements before concluding his investigation.

The onus is on the Appellant, Nelson Ready Mix, to demonstrate an error or a basis for the Tribunal to vary the Director's Determination that Ken Ricalton was dismissed without just cause.

The question before me is twofold: whether Mr. Ricalton was dismissed for a single act of misconduct or insubordination or for a series of instances of misconduct; and whether the employer had just cause to dismiss him as a result. The employer is not arguing that the last incident was itself sufficient to give just cause for the dismissal.

The Tribunal in *Kruger* BC EST #D003/97 set out the following principles as a guide for determining whether an employee has been dismissed for just cause:

The burden of proving the conduct of the employee justifies dismissal is on the employer;

Most employment offences are minor instances of misconduct by the employee not sufficient on their own to justify dismissal. Where the employer seeks to rely on what are in fact instances of minor misconduct, it must show:

A reasonable standard of performance was established and communicated to the employee;

The employee was given a sufficient period of time to meet the required standard of performance and had demonstrated they were unwilling to do so;

The employee was adequately notified their employment was in jeopardy by a continuing failure to meet the standard; and

The employee continued to be unwilling to meet the standard.

Where the dismissal is related to the inability of the employee to meet the requirements of the job, and not to any misconduct, the tribunal will also look at the efforts made by the employer to train and instruct the employee and whether the employer has considered other options, such as transferring the employee to another available position within the capabilities of the employee.

In exceptional circumstances, a single act of misconduct by an employee may be sufficiently serious to justify summary dismissal without the requirement of a warning. The Tribunal has been guided by the common law on the question of whether the established facts justify such a dismissal.

Section 63 of the *Act* sets out the requirement of employers to compensate employees for length of service and when this requirement is discharged. The relevant portions of Section 63 state:

After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week's wages as compensation for length of service.

The employer's liability for compensation for length of service increases as follows: ...

after 3 consecutive years of employment, to an amount equal to 3 weeks' wages plus one additional week's wages for each additional year of employment, to a maximum of 8 weeks' wages

The liability is deemed to be discharged if the employee...

terminates the employment, retires from employment, or is dismissed for just cause.

In response to Mr. Ricalton's written submissions to the Tribunal by way of letter dated January 4, 1999, the employer set out in its submissions dated February 8, 1999:

Ken is correct that letters were issued after the fact and the letters were not related to one incident....I have stated from the beginning that Ken's dismissal was not the result of a single act but was in fact the result of a number of incidents. Ken was issued two letters, being April 23, 1998 and May 6, 1998 prior to his dismissal letter of June 4, 1998. Ken did appear "to be trying---" but it was short-lived and ended up in his dismissal on June 4, 1998.

Mr. McRann claims that Mr. Ricalton was dismissed for a number of incidents which he agrees are unrelated. When he was asked by Mr. Wall at the hearing if the warning in the letter of April 23, 1998 meant that if Mr. Johnson or Mr. Ricalton lost his temper again then he would be dismissed, Mr. McRann stated that the warning did not mean that there would be a dismissal.

The employer also points to the impact Mr. Ricalton's reactions had on other employees. However when questioned about the impact on other employees following the incident on April 8, 1998, Mr. McRann stated that he spoke to other employees about the incident but only two other individuals were present. He approached them and they agreed that it took place but did not say that it bothered them.

Mr. Schoonhoven testified that he dismissed Mr. Ricalton for safety issues and that he did not understand Mr. Ricalton's job to be in jeopardy as a result of the warning given in the letter of April 23, 1998. In his letter of June 4, 1998, however, there is a great deal of discussion regarding Mr. Ricalton's "attitude" and description of past exchanges regarding taking direction.

With regard to the letter dated May 6, 1998, the letter concerns safety issues and sets out that the consequences of not observing these concerns would be to stagger all start times. There is reference to disciplinary action being taken with the other employee but it is very clear that Mr. Ricalton is not being warned that his job is at risk.

What I can extract from all the evidence is that there were three areas in which the employer had concerns regarding Mr. Ricalton: attitude at work, dealing effectively with safety concerns

in his area of responsibility i.e., the pre-cast shop, and obeying his superior.

With regard to his attitude, I find that it must be viewed in the context of the work environment.

There was an atmosphere of prank playing and petty rivalry which was not being addressed effectively by management. Mr. Ricalton was frequently the brunt of this activity and reacted in anger and frustration. Prior to Mr. macron's tenure, Mr. Ricalton had attempted to have the problems resolved at meetings with no success. He also sought the assistance of Mr. Schoonhoven who presented retaliatory pranks as viable solutions. Mr. Schoonhoven did not deny that this was the case. The incident which the appellant points to for substantiation of Mr. Ricalton's poor attitude is the one on April 8, 1998, which resulted in a letter to him and the other party involved warning him that other incidents of "this nature" (which I find are restricted to differences between Mr. Johnson and Mr. Ricalton) would result in disciplinary action or dismissal. I find that this incident was not related to the June 4, 1998 incident, in particular as Mr. Schoonhoven testified that he did not consider Mr. Ricalton's job to be in jeopardy if he lost his temper again.

As far as safety went, Mr. Ricalton was not having success with his subordinates following his orders to maintain a safe work area and this resulted in a letter dated May 6, 1998 which set out that the next step to be taken would be to stagger all start times. There was no warning of disciplinary action directed at Mr. Ricalton. The letter stated that disciplinary action had been discussed with the employee in question and that he had been given a letter of reprimand. Yet Mr. Schoonhoven testified that he had dismissed Mr. Ricalton over safety issues.

With regard to Mr. Ricalton's dealings with his superior there was no evidence from the employer that any definitive action had ever been taken in this regard. In response to the question of how he had dealt with the situations he described between himself and Mr. Ricalton where he felt Mr. Ricalton was not taking instruction and being sarcastic or ignoring him altogether, Mr. Schoonhoven could not recall how he had addressed these incidents or what the outcome had been. He also stated that he probably had not warned Mr. Ricalton what would happen if he continued to conduct himself in this manner. Mr. Schoonhoven testified that during the last exchange between him and Mr. Ricalton he felt he could no longer work with Mr. Ricalton because there had been such a breakdown in their relationship and he was losing his credibility with other staff. However, when questioned regarding who else was present during this exchange, Mr. Schoonhoven replied that his back was turned but he did see someone walk by. I find that both parties had lost their temper, which had happened before and not been addressed adequately, and that on this occasion when Mr. Ricalton attempted to calm down and hold his tongue, Mr. Schoonhoven provoked him further by telling him that if he had a problem with the way things were done then he knew where his truck was.

Mr. McRann first testified that only he had the authority to dismiss Mr. Ricalton, then he stated that Mr. Schoonhoven had the authority to dismiss him but Mr. McRann had the final authority and that he ratified the dismissal after considering all the past events concerning Mr. Ricalton's work performance.

The appellant's position that this dismissal was not a result of a single act of misconduct or insubordination is not enough to sustain its position that Mr. Ricalton was dismissed for just

cause in light of the test set out above. I find that these were all instances of minor misconduct. Further, they were largely unrelated matters and the employer had not adequately notified Mr. Ricalton that his employment was in jeopardy by a continuing failure to meet standards which had also not been clearly identified particularly with regard to this issues of safety and respect for a superior.

After careful consideration of the lengthy testimony and submissions, I find that the Director's Determination in so far as finding that Mr. Ricalton was terminated without just cause is correct and the appeal should be dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination of the Director, dated December 11, 1998 is confirmed as issued in the amount of together **\$2510.45** with whatever further interest that may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

**Fernanda M. R. Martins**  
**Adjudicator**  
**Employment Standards Tribunal**