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-

John Paul Knecht

("Knecht")

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 99/127

DATE OF DECISION: May 19th, 1999

DECISION

OVERVIEW

This is an appeal brought by John Paul Knecht ("Knecht") pursuant to section 112 of the *Employment Standards Act* (the *"Act"*) from a Determination issued by a delegate of the Director of Employment Standards (the "Director") on February 9th, 1999 (the "Determination").

The Director's delegate determined that Knecht's former employer, Johnny's Bakery (1981) Ltd. (the "employer"), had just cause to terminate Knecht's employment and, therefore, was not obliged to pay Knecht 2 weeks' wages as compensation for length of service. With respect to Knecht's claim for unpaid overtime, the delegate determined, after examining the employer's employment records that, at most, Knecht had earned something less than $20 in overtime during a 16-month period. The delegate held, applying section 76(1)(c) of the *Act*, that the amount in question was trivial and thus also dismissed Knecht's overtime claim.

FACTS AND ANALYSIS

Knecht was formerly employed as pastry wrapper and bread slicer at the employer's bakery; Knecht takes issue with the delegate's finding as to the period of his employment but the length of his employment is only relevant (for purposes of calculating his entitlement to compensation for length of service) if the employer did not have just cause to terminate Knecht's employment.

The uncontested evidence before both me and the delegate is that Knecht was issued a written warning on September 1st, 1998 regarding his failure to complete all of his assigned tasks as set out in a job description that was provided to him in mid-August 1998. This written warning stated, in part:

> "You have been given a job description yet you are still not doing the job as expected. For example, you refuse to make bread crumbs when asked.

> This is your written warning that you will be fired if you do not comply with job expectations."

According to the information set out in the Determination, and corroborated by a written statement from a co-worker, Theresa Borm, on November 13th, 1998 Knecht left work after some three hours without having completed all of his assigned duties. The employer's principal contacted Knecht by telephone and during their telephone conversation Knecht initially queried why he should have to return to work to complete his duties but then, according to Knecht's version of events, said that would return to work if necessary whereupon the employer's principal dismissed him. The employer's evidence was that Knecht simply refused to return to work telling the employer's principal to complete the work himself.

Regardless of which version of events one chooses to accept, the fact remains that Knecht was specifically warned, on pain of dismissal, that he was obliged to complete his assigned tasks and, on November 13th, left work without having done so. As noted by our court of appeal in *Stein v. British Columbia* (1992) 65 B.C.L.R. (2d) 181 at p. 185, it is not open to an employee to question the wisdom of, or necessity for, lawful employer directions:

> "...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'."

By refusing to complete his assigned tasks, Knecht gave his employer a lawful justification for terminating his employment. Accordingly, inasmuch as the employer had just cause to terminate Knecht's employment, by reason of section 63(3)(c) of the *Act*, Knecht was not entitled to any compensation for length of service.

So far as I can gather, Knecht does not appeal the dismissal of his overtime claim. However, for the sake of completeness, I will note that I find no appealable error on the delegate's part. As noted in the Determination, the overtime claim consisted of a series relatively minor amounts of overtime--usually just a few minutes--aggregated over some 16 months and totalling no more than $20. Given the evidence before the delegate that, on several occasions, Knecht left before his 4-hour shift ended (but was paid for the full shift) and the relatively minor amount of the aggregated overtime claim, I cannot conclude that the delegate erred in dismissing the overtime claim pursuant to section 76(2)(c) of the *Act.*

ORDER

Pursuant to section 115 of the *Act*, I order that Determination be confirmed as issued.

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Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal