

**EMPLOYMENT STANDARDS TRIBUNAL**  
In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act*

- by -

William Gregory Clough  
("Clough")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	John McConchie
<b>FILE NO.:</b>	96/181
<b>DATE OF HEARING:</b>	August 1, 1996
<b>DATE OF DECISION:</b>	August 19, 1996

**DECISION**

**OVERVIEW**

This is an appeal by William Gregory Clough pursuant to section 112 of the Employment Standards Act (the "Act") against Determination No. CDET 001412 issued by the Director of the Employment Standards Branch (the "Director") and dated March 1, 1996.

The Determination found that Mr. Clough had quit his employment. It therefore found that Mr. Clough was not entitled to compensation under the Act.

Clough has appealed the Determination alleging he did not quit but rather was terminated by his former employer.

**FACTS**

Bill Clough began employment with New West Gypsum on June 23, 1994 as a labourer. His last day of employment was September 14, 1995.

Mr. Clough testified that as of September 14, 1995 he was working a weekend shift at the company's site at 8713 River Road, North Delta. This is a recycling operation which employs about 6 or 7 employees on two shifts. As a labourer, his most important responsibility was making recycled bales from paper shipped to the site.

On September 14<sup>th</sup>, he arrived at work as usual well before shift start at 3:30 p.m. He had earlier spoken with Glenn Hodgins, another labourer, who was working as a lead hand at the site. Hodgins told Clough that Robert Jaggard, a probationary employee who in the preceding days had been working on the same shift with Clough, had been terminated prior to Clough arriving on shift and that another employee had been called in to replace him. Clough testified that Hodgins told him that he was going to do an employee evaluation on him. Hodgins told Clough that he had done performance appraisals on the other employees. Clough accompanied Hodgins to the coffee shack. Clough testified that he was apprehensive. He did not know much about Hodgins because Hodgins had only been working at the site for a short time.

In addition, they had not really worked together. He wondered what right Hodgins had to be doing an evaluation of him when he had not personally observed his work.

Clough testified that they sat on opposite sides of the room. Hodgins had an evaluation form in his hands which he did not share with Clough. Hodgins began reading from the form and making check marks as he went. During the conversation, Hodgins identified criticisms of Clough's work in several areas, criticisms which Clough felt were unfair and which he rejected. Although Clough did not see where Hodgins was making his check marks on the form, he felt that he was being given an unfavourable review. As he put it in his testimony, "his [Hodgin's] words indicated that they should have fired me a long time ago".

Part way through the evaluation, Clough had had enough. Fundamentally, he felt that the company did not have the right to evaluate him. The last straw was when Hodgins talked to him about being on the crew which had destroyed 30 bales of paper. Clough told him that "neither I nor the guy you fired destroyed 30 bales, ever ...". He testified that he told Hodgins that he "was not going to listen to the rest of the bullshit appraisal." Clough said that Hodgins then said: "why don't you just f... off then." It was about 4:10 p.m., less than an hour after the beginning of his shift. Clough left the site, and never returned. He testified that he knew that he had worked his last day with the company when he had left the site. He felt that the evaluation meeting had been held for the purpose of setting him up for termination, and that he had been fired when Hodgins had told him to "f... off." He did not contact the company thereafter about his job.

Glenn Hodgins testified that he had worked for the company for about four years prior to September 14, 1995, including one year at the River Road plant when he joined the company in 1992. After a lengthy stint in New Westminster, he returned to the River Road plant in mid-June of 1995 and took over for a supervisor who had quit. He testified that he was a labourer who had been given the task of "looking after" the site. The site was a troubled one and he was attempting to improve its operations.

Hodgins testified that he had given all of the other employees an evaluation. There is a place on the employee evaluation form where the employees sign to acknowledge that they have received the evaluation and that it has been discussed with them. A copy of Mr. Clough's evaluation was put into evidence through Mr. Hodgins. It was an evaluation which Mr. Clough had not seen because he left before discussion of his evaluation was completed. All of the other employees had signed their evaluations. Mr. Clough was the lone exception, said Hodgins.

Hodgins testified that the meeting was a heated one. Shortly after he began the evaluation Clough began to "rant and rave". Hodgins agreed that he and Clough had rarely worked directly together. Hodgins was, however, able to see the results of Clough's work because he came on shift immediately after Clough had completed his shift. He was of the opinion that Clough was an average worker. Indeed, the evaluation form put into evidence indicated average results almost throughout. However, although Clough's productivity was acceptable and his performance generally average, as they went through the interview, Hodgins had criticisms which he mentioned to Clough. The one that led to a breakdown in the discussion had to do with Clough's tact, or lack of tact, in dealing with others. Hodgins was present at an incident involving a trucker in which he felt Clough had displayed a lack of tact. When Hodgins conveyed this criticism, Clough blew up. He screamed at Hodgins that he was being set up and yelled profanities about another employee who he felt was also involved. Then Clough stormed out. Hodgins testified that he did not tell Clough to "f... off" or use any words to that effect. Clough just got in his car and left quickly.

Hodgins then spoke to Clough's son, who was also an employee, and told him that his father had left in an "outrageous fit". He had no further communications with Clough.

**ISSUES TO BE DECIDED**

The issue in this case is whether Clough quit or was fired. The issue was framed in the following way by adjudicator Stevenson in the recent Employment Standards Tribunal decision in *Burnaby Select Taxi Ltd. and Zoltan Kiss* [1996] BCEST #D091/96:

*“The right to quit is personal to the employee and there must be clear and unequivocal facts to support a conclusion that this right has been voluntarily exercised by the employee involved. There is both a subjective and an objective element to a quit: subjectively, the employee must form an intent to quit employment; objectively, the employee must carry out an act inconsistent with his or her further employment. The rationale for this approach has been stated as follows:*

*“ . . . the uttering of the words "I quit" may be part of an emotional outburst, something stated in anger, because of job frustration or other reasons, and as such it is not to be taken as really manifesting an intent by the employee to sever his employment relationship.”*  
*(Re University of Guelph, (1973) 2 L.A.C. (2d) 348)”*

**ANALYSIS**

After a careful reflection on the evidence before me, I have concluded that the officer's assessment must be upheld. I have concluded that the evidence is clear and unequivocal that Mr. Clough was not fired on September 14<sup>th</sup> but rather quit his employment.

Firstly, I am not able to conclude on the evidence that Hodgins told Clough to “f... off” or used words to this effect. Clough himself was in doubt about the precise words used. In his final argument, he referred to having been told to “get lost or words to that effect.” His uncertainty is understandable -- he was in a state of high agitation at the time. However, having in mind Hodgins’ clear denial under oath of the allegation, I cannot be confident that Clough has an accurate recollection of the words used in the meeting. However, even if Hodgins replied with angry words, on Clough’s own evidence these words followed Clough’s statement that he “was not going to listen to the rest of the bullshit appraisal”. Clough initiated the discussion about leaving the interview. Even had Hodgins agreed that the interview was terminated, this would not reasonably have led Clough to conclude that he was being dismissed from employment. It was on Clough’s own initiative that he left the site -- Hodgins neither instructed him to do so or suggested it to him. I must conclude that the evidence does not disclose any intention on Hodgins’ part to terminate Clough and no actions taken by him which could be reasonably construed as termination.

Clough might have been successful in his appeal if he had been able to show that the employer had placed him under such duress that his resignation might be seen as involuntary. There was no evidence that this occurred. Neither can I conclude that Clough was being “set up” for termination. The evaluation was an average evaluation which would not provide any support for a later termination. This is not to say that Clough’s concerns about the accuracy of the evaluation were necessarily without foundation. The evaluation might well have been inaccurate on some point. Moreover, during the meeting, Hodgins’s comments were mainly critical rather than constructive. This, added to the fact that Hodgins did not know him well, grated on Clough, who is obviously a proud man who has worked in several occupations over the years with what he believes is full energy and dedication. Having said that, however, I am unable to conclude that Hodgins was attempting to provoke Clough in the meeting. He may have wrong in his evaluation of Clough, but he was instructed to provide an evaluation and did so, I conclude, without malice.

The meeting confirmed to Clough that his abilities were not being acknowledged by the company. He felt that the evaluation was unfair and he felt insulted to be subjected to an evaluation by another worker who did not even know his work from personal observation. Clough's option was to acknowledge receipt of the evaluation and ensure that he had a note on his file indicating his disagreement with it. He did not do that. He had seen that the company had terminated the employee who worked on shift with him and he came to the conclusion during the meeting that he was being “set up” to be next. He decided that he was not going to take this kind of treatment. He told Hodgins so and left the site.

I have concluded that the circumstances and manner in which Clough left the meeting with Hodgins on September 14<sup>th</sup> show that he decided to quit his employment with the company during that meeting. At the time he left the site, he knew that he had worked his last day for the company. He did not return and did not contact the company about his status. His subsequent conduct is consistent with the conclusion that he had intentionally brought his employment with the company to an end on September 14, 1995.

**ORDER**

Pursuant to Section 115, I order that Determination No. CDET 001412 be confirmed.

---

**John McConchie**  
**Adjudicator**  
**Employment Standards Tribunal**

JLM:jel