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 -

Labyrinth Lumber Ltd.
("Labyrinth" or the "employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2000/324

DATE OF DECISION: July 12, 2000

DECISION

OVERVIEW

This is an appeal brought by Labyrinth Lumber Ltd. ("Labyrinth" or the "employer") 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 April 20th, 2000 under file number ER 88918 (the "Determination").

The Director's delegate determined that Labyrinth owed its former employee, Steve Hiebert ("Hiebert"), the sum of $1,059.12 on account of two weeks' wages as compensation for length of service (see section 63 of the *Act*) together with concomitant vacation pay and interest.

ISSUE ON APPEAL

Appended to the employer's notice of appeal is a letter, signed by the employer's Personnel Manager, addressed to the "Ministry of Labor" [sic] which sets out the basis for the appeal of the Determination. This letter is reproduced, in full, below:

> "We would like to appeal the [Determination] on the grounds that your decision is based upon 1 day, while the Companies [sic] decision is based on our safety record which has been high for the previous month. During the previous month Steve Hiebert and [another employee] were observed doing unsafe acts which they admitted to. The discussion and termination on May 5,99 were a result of people watching Steve doing unsafe acts over a period of time.
>
> It looks like the Companys [sic] position wasn't even enternained [sic], as a decision of May 5,99 was the only time frame which your decision is based upon. We take offense to this as Owners and Managers and feel that we are not Creditable [sic] in the eyes of the Ministry of Labor [sic], and further more [sic] we feel this is due to being American Owners operating in Canada.
>
> We would like an immediate withdraw [sic] of the Determination and order to pay for lost time of Mr. Hiebert."

As I read the above letter, it appears to raise at least two grounds of appeal. First, the employer says it had just cause for terminating Hiebert's employment due to his having undertaken a number of "unsafe acts" at the workplace. Second, the delegate was biased against the employer due to the fact that its principal shareholder is based in the United States.

I should note, at the outset, that there is no evidence before me to support the employer's assertion that the delegate was biased. I do not propose to deal with this fanciful suggestion further. I will, however, more fully address the employer's submission that it had just cause to dismiss Hiebert.

FACTS AND ANALYSIS

As noted in the Determination, both the employer and Hiebert agree that a disciplinary meeting took place on May 5th, 1999 at which time both Hiebert and another employee were terminated. Hiebert's alleged misconduct is set out in a memorandum--Attachment 1 to the Determination--dated May 5th, 1999 which purports to be a summary of this disciplinary meeting as it related to Hiebert. The May 5th memorandum sets out various misdeeds including, *inter alia*, "defacing wood", "repeatedly and intentionally spit on lumber" and intentionally shutting down plant equipment in order to interfere with production and "screw up" other mill employees. Although the memorandum purports to record Hiebert's acknowledgement of various inappropriate behaviours, the memorandum is not signed by Hiebert and, for his part, Hiebert has consistently maintained that he never admitted to the various misdeeds attributed to him in the memorandum. It should also be noted that the employer's position before the Tribunal appears to have narrowed compared to the position it advanced before the delegate.

In the Determination, the delegate correctly observed that the burden of proving just cause rests with the employer. The delegate also noted that the employer had not produced corroborative evidence in support of its allegations of cause. Indeed, there was evidence before the delegate (set out in the Determination) that was inconsistent with the employer's allegations against Hiebert. The delegate was not satisfied that the employer had met its evidentiary burden of proving just cause.

Similarly, there is a dearth of evidence before the Tribunal. In addition to the notice of appeal and appended letter (quoted above), the employer also submitted a 28-page document in support of its position that it had just cause for termination. *The employer did not submit any other evidence.*

The notice of appeal and appended letter, of course, set out mere allegations; these allegations are wholly uncorroborated by any evidence and, of course, are vigorously challenged by Hiebert. The employer's 28-page submission is almost entirely comprised of reports of injuries spanning the period from January to early May 1999. I must say that I am wholly unable to appreciate how this report--which includes references to quite a number of injuries involving quite a number of employees--corroborates, *in any fashion,* the employer's position that it had just cause to terminate Hiebert's employment due to his having engaged in various unsafe workplace practices. My review of this list of injuries disclosed that among the approximately 285 injuries reported in the document, *only 1 related to Hiebert.* One cannot infer from the mere fact that an employee suffered one seemingly minor workplace injury--during a period spanning some three months--that the employee engaged in a concerted pattern of unsafe workplace practices.

The employer has manifestly failed to show that it had just cause to terminate Hiebert and, accordingly, this appeal must be dismissed.

ORDER

Pursuant to sections 114(1)(c) and 115 of the *Act*, I order that this appeal be dismissed and that the Determination be confirmed as issued in the amount of **$1,059.12** together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal