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 -

Shawne Martinson
("Martinson")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Lorna Pawluk

FILE NO.: 97/171

DATE OF HEARING: June 20, 1997

DATE OF DECISION: July 27, 1997

DECISION

APPEARANCES

Steve Hway
Trish Boyd — For Wescan

Ron Simunovic — For Shawne Martinson

Matthew Coenen — Witness

OVERVIEW

This is an appeal by Shawne Martinson ("Martinson") pursuant to section 112 of the *Employment Standards Act* (the "*Act*") against a Determination issued by the Director of Employment Standards (the "Director") on February 24, 1997. In this appeal, Martinson claims that he has been unjustly dismissed under section 63 of the *Act*.

ISSUE TO BE DECIDED

Whether the employer had just cause to dismiss Martinson for breach of policy.

FACTS

Martinson was employed as an edger with Wescan Glass Industries (VAN) Inc. ("Wescan") continuously since August of 1991. (He was previously employed with the company but was temporarily laid off due to shortage of work.) In his capacity as an edger, Martinson worked around moving machinery. His hair was long enough to be put in a pony tail and he had been told that he had to confine it, as a safety precaution. He would confine it by placing a baseball-type hat on his head and then by putting his hair, pony tail fashion, through the loop at the back of the hat. He said that he wore his hat this way 90% of the time and the other 10% of the time it was not placed in the loop.

Testifying at the oral hearing was an Occupational Safety and Health Officer with the Workers Compensation Board of British Columbia, Matthew Coenan. Mr. Coenan's geographic area of responsibility includes the Wescan premises and in this capacity he visits that work site several times a year. He indicated that he met with several employees about the confinement of hair but that he could not recall specifically talking to Martinson. Mr. Coenan had an opportunity at the hearing to observe how Martinson confined his hair and concluded that this method, with the

pony tail through the back loop of the baseball cap, would be inadequate for compliance with WCB regulations and for safe movement at the worksite.

It is common ground between the parties that Martinson was not advised that breach of the hair confinement policy would result in his termination and that this consequence was not clearly outlined in company policy.

The Employment Standards Officer who investigated Martinson's complaint concluded that since Martinson had been explicitly told what was expected of him, the employer had just cause for dismissal.

ANALYSIS

In order to establish just cause for termination on the basis of a breach of company policy, the onus is on the employer to show that the policy is part of the employment contract and that the employee was clearly informed of the policy and the consequences of disobedience. I find that in this case, the policy was part of the employment contract and Martinson had been clearly informed of the policy; however, there was no clear statement in the policy or to Martinson personally that his continued disobedience would result in his dismissal. While it is true that the employer had unequivocally expressed its displeasure on several occasions about Martinson's hair and Martinson clearly disliked and defied the rule, it is also clear that Martinson had not been told that his employment was in jeopardy if he continued to ignore the policy. The policy was also silent as to the consequences of non-compliance. In such circumstances, the employer did not discharge its onus to show it had just cause to dismiss Shawne Martinson.

Much was made of the meeting involving Hway, Coenan and Martinson, with counsel for Martinson rigorously questioning Hway about the details of the meeting. Counsel suggested that Hway was less than forthcoming and that I should reject Hway's testimony as being unreliable or false. I disagree. I found Hway forthright and believable. Moreover, Hway's version of events was confirmed by Trish Boyd. I thus reject Martinson's version of events that he was not present at the meeting with Mr. Coenan. I also reject the suggestion that Hway devised this plan to terminate Martinson due to a personality conflict; Hway dismissed Martinson because of his continued defiance of the hair confinement policy and because of Martinson's bad attitude.

There was also discussion about an interchange between Trish Boyd and Martinson in which she either motioned to him in such a fashion to convey displeasure with this hair. Regardless of precisely what Boyd was intending to convey, it is clear that she did not tell Martinson on that occasion or any other time that his employment was in jeopardy if he continued to confine his hair in an unsafe way.

Finally, evidence was lead about another problem with Martinson's job performance while employed at Wescan. As it is not being put forth by the employer to justify its actions, I did not consider it in my deliberations.

ORDER

Pursuant to section 115 of the *Act*, I hereby cancel the Determination dated April 5, 1997.

Lorna Pawluk
Adjudicator
Employment Standards Tribunal