

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 -

Hi-Rise Salvage Ltd.
("Hi-Rise")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: John M. Orr

FILE NO.: 97/232

DATE OF HEARING: June 27, 1997

DATE OF DECISION: July 14, 1997

DECISION

APPEARANCES

John Belliveau	for Hi-Rise Salvage Ltd.
Geof Simair	counsel for Kevin Daukier
Kevin Daukier	for himself

OVERVIEW

This is an appeal by Hi-Rise Salvage Ltd. (“Hi-Rise”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) from a Determination dated March 14, 1997 bearing File No. 079-748, by the Director of Employment Standards (the “Director”).

The Determination found that Hi-Rise had contravened Section 63(2) of the *Act* by dismissing Kevin Daukier (“Daukier”) without cause and without compensation.

Hi-Rise appeals on the grounds that the Director placed too much emphasis on the Record of Employment which said that Daukier was laid off and was wrong in not accepting the evidence that Daukier was given ample warning and opportunity to remedy his behaviour before he was dismissed for cause.

ISSUE TO BE DECIDED

The issue to be decided in this case is whether the employer, Hi-Rise, had just cause for dismissing and did dismiss Daukier or whether he was laid off without cause and without compensation.

FACTS

John Belliveau (“Belliveau”) testified at the hearing on behalf of Hi-Rise. He said that Hi-Rise operated a recycling business and that Daukier was an employee of the company for several years. He said that Daukier was like a son to him and that they had worked together for a long time. However, for a number of months Daukier’s work performance had started to decline. He would arrive at work late, stay in the office drinking coffee when he should have been working and generally slow down at the job.

Belliveau called Daukier into the office. He says he took Daukier by the shoulder and asked him what the problem was but did not get a response. He warned Daukier that he would have to let him go if he could not pick up his work. He says that Daukier told him that he wouldn't mind being laid off then changed his mind and said no, he needed the money and would try harder.

Shortly after his first warning Daukier's work again slowed down. He would stay in the lunchroom or just walk around not working. Belliveau again took him aside and talked to him in the office for about four hours to try to find out what the problem was. Daukier wouldn't say and seemed to be defying Belliveau to do something. Belliveau suspended him for 4 days. Belliveau felt that maybe Daukier was just burned out and needed a rest. He told Daukier to use the time to rest and to come back and give it another try.

When Daukier returned to work after the suspension he worked well for a couple of days but again his work started to decline. He was again given a warning that if his work did not pick up in the next couple of days he would be dismissed. On December 4, 1996 Daukier's employment was terminated. He was given a Record of Employment (ROE) which said that he was "laid-off". Belliveau testified that he put laid off on the ROE at Daukier's request and to help Daukier with his unemployment insurance.

Daukier testified and agreed that he had been warned. He acknowledged that he had been sent home as discipline and as a curative measure to recuperate if he was just tired. He agreed that his work performance was bad during the latter part of his employment. He said that he was annoyed that another employee had been hired on at a higher rate.

ANALYSIS

The onus at this appeal is on the appellant, in this case the employer, Hi-Rise, to satisfy the Tribunal that the Determination is wrong.

However, on the evidence before me, and on Daukier's own evidence in particular, I am satisfied that the appellant has shown that there was just cause for dismissal in this case and that in fact Daukier was dismissed for cause.

Daukier was not laid off for lack of work. In fact Daukier's reason for not working properly was that another employee had been hired. Daukier at no time explained his sense of grievance to the employer but chose instead to not work. He was given ample warning and opportunity to remedy the situation but still did not seem willing to work as expected. The employer made every reasonable effort to help Daukier without success. The fact that the ROE indicated "lay-off" was more a indication of Belliveau's kindness and concern for Daukier than the true state of affairs.

ORDER

I order, under Section 115 of the *Act*, that the Determination herein is cancelled.

**JOHN M. ORR
ADJUDICATOR
EMPLOYMENT STANDARDS TRIBUNAL**