

**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 -

Martin Andrew Craigdallie  
("Craigdallie")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	John M. Orr
<b>FILE NO.:</b>	97/212
<b>DATE OF HEARING:</b>	June 30, 1997
<b>DATE OF DECISION:</b>	July 10, 1997

## DECISION

### APPEARANCES:

Martin Andrew Craigdallie for Himself

Christine Anderson and Julianne Rangelfor Merlin's Cabaret Ltd

### OVERVIEW

This is an appeal by Martin Andrew Craigdallie pursuant to Section 112 of the *Employment Standards Act* (the "Act") from a Determination dated March 14, 1997 by the Director of Employment Standards (the "Director").

The Determination found that Martin Andrew Craigdallie ("Craigdallie") was dismissed with just cause by Merlin's Cabaret Ltd ("Merlin's") when two of the managers of Merlin's had information that he had been selling drugs whilst at work and he admitted to possession of drugs while working.

### ISSUE TO BE DECIDED

The issue to be decided in this case is whether Merlin's had just cause to dismiss Craigdallie.

### FACTS

Craigdallie started working for Merlins in July 1996. His job was doing day and night promotions which involved going around the city and encouraging customers and patrons of other establishments to go to the club called Uforia which was owned by Merlins. He also worked at the club from time to time as a doorman.

In late October Ms. Rangel, one of Merlins' managers, received a phone call from a former employee who told her that Craigdallie had been selling drugs while on duty and working outside a pub called "Hunters" - an establishment owned by the same owners. Ms. Rangel took Craigdallie aside and told him what she had been told. He did not deny the accusation and Ms. Rangel told him that, if it was true, it was completely unacceptable and that there would be no second chance.

Ms. Rangel shared this information with the other manager, Ms. Anderson, and they decided to give Craigdallie the benefit of the doubt and take no further action at that time.

About a week later, on Tuesday November 5, 1996 after a staff meeting, two staff members approached Ms. Anderson about Craigdallie. One staff member said the Craigdallie had been selling

cocaine, in the presence of this staff member, to the exotic dancers at another club called Monty's. The second employee said that he had observed Craigdallie to have a film container containing cocaine in his truck while he was using the vehicle during his employment.

Ms. Anderson had a meeting with Craigdallie during which he did not clearly deny selling drugs but questioned the quality of the evidence against him. He admitted to being in possession of drugs but said it belonged to a friend. Ms. Anderson explained that this was a very serious allegation as it potentially affected the company's business and liquor licence. She suspended Craigdallie pending further investigation.

Ms. Anderson then spoke to a third employee who told her that during Craigdallie's working hours Craigdallie had taken this other employee to a house and purchased drugs for him. As a result of this and the previous information Ms. Anderson dismissed Craigdallie.

At the appeal Craigdallie agreed that he never denied the drug dealing but claimed that the managers did not have sufficient evidence to fire him and that it was all "hearsay". He testified that when he was confronted he said "fine!" or "whatever!" and "Will I get U.I.?". He seemed most upset that he felt he got screwed because he was unable to claim unemployment insurance.

He testified that he didn't say anything about the drug dealing and at the hearing said, "I'm not going to say that I was or I wasn't." He felt that he was not hurting the club and that he had been doing a good job. He claimed that it wasn't affecting his job. The managers confirmed that he was otherwise doing a good job.

There were no rules or employment policies about drug dealing on the job but Craigdallie agreed that it was common sense. He said he didn't understand why his job was on the line and the other employees who had been with him had not been dismissed.

## **ANALYSIS**

This is an appeal from a Determination and, therefore, the onus is on the appellant, (in this case the employee, Craigdallie) to show why the Determination is wrong. In the first instance the onus is on the Employer to show just cause for dismissal. In this appeal, Craigdallie relies on the lack of evidence in the first instance for dismissal. There was no new evidence led before me. Craigdallie inferentially admits to the drug dealing. He says they didn't have proof, it was all hearsay, that the drug dealing was not affecting his job, and that other employees should have been dismissed. He did not at any time, either to his employer or at this hearing, deny the allegations.

The evidence that the Employer had at the time of dismissal was from four different sources: the first phone call, the two employees after the staff meeting, and the third employee after the suspension. The three employees had actually observed the drug dealing first hand - this is not "hearsay" but direct evidence. Craigdallie had been warned by Ms. Rangel and even after the warning he continued with the illegal activity.

There is no doubt that the Employer had substantial evidence that Craigdallie was selling drugs while on company business and company time. The commission of a serious criminal offence on the Employer's premises and while on duty gives just cause for dismissal.

There was no new evidence on the appeal that would cause me to overturn the Determination of the Director.

**ORDER**

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

**John M. Orr**  
**Adjudicator**  
**Employment Standards Tribunal**