

**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 -

Alpine Press (1998) Ltd.  
("Alpine")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE No.:** 2000/361

**DATE OF HEARING:** August 10, 2000

**DATE OF DECISION:** August 31, 2000

**DECISION**

**OVERVIEW**

This appeal is pursuant to section 112 of the *Employment Standards Act* (the “Act”) and by Alpine Press (1998) Ltd. (“Alpine”, also, “the appellant”). Alpine appeals a Determination by a delegate of the Director of Employment Standards (the “Director”) dated April 28, 2000. The Determination orders Alpine to pay Norman Lam wages, compensation for length of service in the main, with vacation pay and interest being over and above that.

The Determination is that Alpine laid Lam off due to a shortage of work and that it then fired him without notice. Underlying the Determination is a decision that Alpine did not have just cause. Alpine, on appeal, claims that Lam put the company in jeopardy, just as the company was getting on its feet, by telling customers that it was in financial difficulty. Alpine also claims that all issues between it and its former employee were settled months ago and that Lam is going back on that settlement.

**APPEARANCES:**

Michael Spence	On behalf of Alpine
Patrick Kelly	Witness
Wayne Lavis	Witness
Norman Lam	On his own behalf

**ISSUES TO BE DECIDED**

The matter of whether Alpine did or did not have just cause is at issue. It is also claimed that Lam accepted a settlement offer of \$447.62. What I must ultimately decide is whether the employer has or has shown that the Determination ought to be varied or referred back to the Director for reason of an error or errors in fact or law.

**FACTS**

Michael Spence bought Alpine Press on February 13, 1998. At that point he hired a number of people that had worked for the former Alpine Press. Norman Lam was one of those employees. He was in sales but, as Alpine is a relatively small company, he did other jobs as well.

The former Alpine Press had a history of not paying its debts and it was well known for that.

Alpine, under Spence’s ownership, faced certain financial difficulties as many a new company does at the start. That compounded the problem that Lam faced when it came selling production

to other companies. And making matters worse, Alpine had trouble paying some of its bills on time. Les Richards, who was second in command at Alpine and therefore a person who would know about such things, was interviewed by the delegate. According to Richards, it was hard for Lam to secure sales at times because people knew that Alpine did not always pay its bills. As he described matters, he said that Alpine's reputation for paying was not that great.

Alpine, on appeal, claims that I should disregard what Richards has had to say because he now works at the same company as Lam and they have a personal relationship.

Alpine's claim is that Lam undermined its business by making a point of telling people that it was in financial trouble, that it did not pay its bills, and that they should only deal with Alpine on a COD basis. Spence claims that Lam admits to doing so but I find that there is not proof of that and that Lam denies having done so. Beyond that I find that as support for its claim, two of Alpine's current employees step forward. Patrick Kelly, who operates a press, tells me that he on at least a couple of occasions, overheard Lam speaking to customers and say "don't trust them" and "get your money up front". And he tells me that he is certain that Lam was talking about Alpine. Wayne Lavis, a salesperson, tells me that he overheard Lam make a number of negative comments about Alpine, such things as "don't give them credit", "make sure its COD", and "don't trust them". He tells me that he complained to Richards about that and Richards told him that he had told Lam "to keep his mouth shut". And he tells me that, on visiting some of the companies, Sharp Printers being just one of the companies, that he received information that led him to think that Lam was saying negative things about Alpine's financial situation.

Lam accepts only that, as a last resort, when it appeared that a company was just not going to deal with Alpine out of fear that they would not get paid, he would then suggest that the deal be done COD. As he describes matters, he was merely trying to sell all of the production that he could in difficult circumstances. He says that Alpine's reputation for not paying just kept coming up, over and over.

I find that I prefer Lam's version of events, as it is the more likely, over that of Alpine. Current employees are open to pressure from Spence and Alpine. Kelly tells me that he feels indebted to Spence for giving him a job. No one explains to my satisfaction why he was not fired before he was laid off, if Lam really was undermining the company as is alleged. I am not prepared to disregard what Richards has said out of hand because his testimony is consistent with what other people told the delegate, persons clearly independent of Lam. I accept that Lam and Richards work together now but Lam is not Richard's boss and the relationship is at arm's length. And finally, I very much doubt, as it is so very unlikely, that Lam, who needed a job and had no plan to leave Alpine before being laid off, would work to undermine his employer.

Lam had to deal with worried people who thought that they might not get paid. Some of those people would have been rather blunt and probing in asking about Alpine's financial state. That would have forced him to address their concerns. In doing so, Kelly and Lavis overheard comments that probably did appear rather odd but they were only hearing one side of the conversation and it is likely that they are taking things out of context.

Lam signed what the employer's calls its "Confidentiality Agreement". I find that the agreement merely requires faithful service and that the employee not disclose the company's secrets. It is of

no importance to the appeal because it is not established that Lam did undermine Alpine or give away trade secrets.

Alpine sent Lam a cheque for \$447.62. On the cheque, Spence wrote, "full and final payment". He argues that to cash the cheque, as Lam did, was to accept the money as settlement of his claim for compensation. Lam tells me that on receiving the cheque, he consulted the delegate and was told to cash the cheque.

## ANALYSIS

Dealing with the second issue first, I find that in sending the cheque to Lam that it did, Alpine failed to make it clear that it was offering to settle for \$447.62. But even if it did, the fact that he cashed the cheque is not to agree to settle any issues. It is to accept money which he believed that he was owed. And it was on the delegate's instructions.

On the matter of the termination and the related matter of compensation for length of service, the claim is just cause. Subsection 3 of section 63 states that the liability to pay length of service compensation is discharged if the employee is terminated for cause.

*63 (3) The liability is deemed to be discharged if the employee*

*(a) is given written notice of termination as follows:*

*(i) one week's notice after 3 consecutive months of employment;*

*(ii) 2 weeks' notice after 12 consecutive months of employment;*

*(iii) 3 weeks' notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 weeks' notice;*

*(b) is given a combination of notice and money equivalent to the amount the employer is liable to pay, or*

*(c) terminates the employment, retires from employment, or is **dismissed for just cause.** (my emphasis)*

The Tribunal recognizes that a single act of misconduct may be of such a serious nature that the employee's immediate dismissal is justified. It also recognizes that an employer may be justified in terminating an employee for reason of minor misconduct where the misconduct is repeated, or for reason of an employee's chronic inability to meet the requirements of a job. But in cases where just cause is alleged for reason of repeated misconduct of a less serious nature, or generally unsatisfactory work, the Tribunal has said (through decisions like *Randy Chamberlin and Sandy Chamberlin operating as Super Save Gas*, BC EST #D374/97) that just cause will be found to exist only where the following is shown:

- (a) That reasonable standards of performance were established and communicated to the employee;
- (b) the employee was plainly and clearly warned that his or her employment was in jeopardy unless such standards were met;
- (c) the employee was given sufficient time to improve; and
- (d) the employee did not meet those standards.

In this case, I have already found that the evidence does not show that Lam undermined his employer, in other words, Lam is not guilty of what is alleged to be an act so serious as to justify immediate dismissal. Frankly, I am satisfied that Lam did nothing wrong at all. It seems that he was just doing his job in what must have been rather trying circumstances and rather blunt, probing questions. The employer cannot expect an employee to be dishonest.

At best, the employer has an argument that Lam could have chosen his words better in dealing with customers. But that is not reason to terminate someone immediately, nor is doing COD deals, if that is something that the employer did not want. If it is repeated, on being plainly and clearly warned not to do so, that is one thing but Alpine terminated Lam after he had been laid off. He was not properly warned, not told what was acceptable and what was not, and he was never given time to improve.

**ORDER**

I order, pursuant to section 115 of the *Act*, that the Determination dated April 28, 2000, be confirmed in the amount of \$1,708.28, and to that I add whatever further interest has accrued pursuant to section 88 of the *Act*.

**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**