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-

Oaklane Enterprises Ltd. Operating Royal Oak Country Grocer.
("Oaklane")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR:	C. L. Roberts
FILE NO:	1999/505
DATE OF HEARING:	October 15, 1999
DATE OF DECISION:	November 03, 1999

DECISION

APPEARANCES

For the Director	G. Omstead
For Oaklane Enterprises Ltd.	Brett Large, B. Turner
Mike Hall	On his own behalf

OVERVIEW

This is an appeal by Oaklane Enterprises Ltd. Operating Royal Oak Country Grocer ("Oaklane"), pursuant to Section 112 of the *Employment Standards Act* ("the *Act*"), against a Determination issued by the Director of Employment Standards ("the Director") July 26, 1999. The Director's delegate found that Oaklane had contravened Section 63 of the Act, and Ordered that it pay Michael Hall ("Hall") $1254.38 as compensation for length of service.

ISSUES TO BE DECIDED

At issue is whether Hall's employment was terminated for cause.

FACTS

Hall was employed by Oaklane as a meat cutter from July 9, 1996 to March 22, 1999 at a rate of $14.75 per hour. Hall alleged that his employment was terminated without notice and that he was not paid compensation for length of service.

During the investigation of Hall's complaint, Oaklane provided the Director's delegate with records as requested, as well as a letter, dated May 3, 1999, outlining the reasons for termination. In that letter, Oaklane's Personnel Development Manager stated that Hall had been terminated for "just cause."

Oaklane advised the delegate that Hall had been spoken to about his behaviour in response to complaints by other staff in December 1998. The delegate found that Hall had been given a day leave with pay while the owner, Brett Large, ("Large") made a decision on the complaints. At the time of the discussions, Hall was working at the Country Grocer in Esquimalt, a store operated by Oaklane. The delegate was provided with Large's letter of suspension dated December 21 as well as Hall's response dated December 22. After a suspension period of December 18 through January 1, Hall was transferred to Royal Oak, another store operated by Oaklane. In February, Large had a further discussion with Hall,

advising him that he was getting a "second chance" at the new location, but that his behaviour would have to change.

In March, there was an incident between Hall and an employee at the Royal Oak store. Shortly after this incident, Hall was dismissed.

Hall advised the Director's delegate that he had not received any warnings about his behaviour at the Esquimalt store. Hall further advised the delegate that he understood that his suspension was to be forgotten after his conversation with Large. He also denied ever receiving a written warning that his job was in jeopardy.

The Director's delegate determined that Oaklane relied on two incidents in dismissing Hall, one at the Esquimalt store, the other at Royal Oak. The delegate found no evidence Hall had been warned in writing. Although Oaklane provided several memos to the delegate, there was no evidence, in the delegate's opinion, that those memos had been provided to Hall.

The Director's delegate also found that although Hall and another employee became involved in an argument on March 16, they worked together again on the 17th.

After reviewing all of the evidence, the Director's delegate concluded that Oaklane had not established just cause to terminate Hall's employment. He determined that Hall had not been adequately warned that his job was in jeopardy, and that the incident with the other employee had not been so serious as to merit dismissal, since Hall worked the day following the incident.

ARGUMENT

Oaklane states that Hall was dismissed for "just cause" which is not defined in the Act. Large contended that Hall was advised both in December and in February that his behaviour at the Esquimalt store was unacceptable and that further incidents would result in his employment being terminated. Large argued that Hall was given a letter dated December 16 at a December 18 meeting between Hall, Turner, another store employee, and A. Hesketh, the store manager. That letter outlined the incidents leading up to December's meeting, and states that co workers were concerned about their safety because Hall had swung a knife around, and that Hall's "moods and intimidation are very disruptive to the meat department." The letter recommended that immediate action be taken.

Oaklane further argues that the delegate erred in assuming that Hall worked with the employee with whom he had a verbal altercation on the day following the incident. Although Hall did work the following day, Oaklane provided evidence in support of its position that the other employee was on her scheduled two days off the day following the incident, and that Hall was dismissed four days later, after he returned from his scheduled two days off.

Large emphasized that while Hill was very skilled at the meat cutting trade, it was his attitude and behaviour around other employees, causing them to fear for their safety, that led to the termination.

Oaklane argues that it is necessary that the employer provide a safe work environment in the meat cutting department since a tense environment could lead to serious injury to other staff. Large argued that persons subject to mood swings and exhibiting aggressive behaviour cannot be permitted in the meat cutting area. Large argued that Hall's behaviour constituted just cause, and that Hall had been advised several times of his unacceptable behaviour. Consequently, Large contended, Oaklane had followed the procedures outlined by the Employment Standards Branch, and the determination ought to be set aside.

EVIDENCE AND ANALYSIS

The burden of establishing that a Determination is incorrect rests with an Appellant. On the evidence presented, I find that the burden has been met.

After hearing the evidence and submissions of the parties, I find that the Director's delegate erred in several of his findings.

Hall agreed that he had a meeting on December 18 in Esquimalt with the management of the store. He argued that the meeting occured as a result of another employee making untrue comments about him. In fact, Hall's characterization of the events surrounding the dismissal was that it was a conspiracy by all the staff who were "out to get him", and that all the witnesses were too worried about keeping their jobs to tell the truth except for Mike Jones, who he regarded as a professional. This view is consistent with the position Hall took during Oaklane's investigation of these incidents.

Hall also agreed that he was given the December 16 letter at that meeting, and that he took it to his lawyer for advice. He stated that because he was suspended shortly after the meeting, he never signed nor returned it. Hall also agreed that he had been spoken to about his behaviour by management at the Esquimalt Store.

Hall was sufficiently concerned about the seriousness of the discussions that he took the letter to his lawyer for legal advice. The suspension from his employment for the period December 18 to January 1 conveyed the serious concerns Oaklane had about his behaviour. Indeed, Hall's evidence is that he felt he had been dismissed. Consequently, I find that Hall was clearly and unequivocally warned that his behaviour was unacceptable, and that his job was at risk if it continued.

I do not accept that the subsequent transfer to the Royal Oak location was a condonation of Hall's behaviour. There was no dispute that Hall met with Large in February regarding the transfer. While Hall denied that he was again warned that his job was in jeopardy during that meeting, I prefer Large's version of what was said at that meeting to that of Hall's. Large's evidence on all other points was consistent with documents provided, while Hall continued to suggest that his problems were all of someone else's making.

I accept that Hall was warned about his behaviour in the December 18 meeting, and again later by Brett Large, and was advised that he was being given a second opportunity to correct his behaviour.

Within months of Hall's move to a new work environment, he was involved in a second, similar incident. I find no evidence that Royal Oak condoned this behaviour. There is no evidence that Hall and the other employee who complained about his actions worked together after that incident.

There is ample evidence that other employees were concerned about Hall's behaviour and the female employees in particular were fearful of their safety. I find that Royal Oak had just cause to dismiss Hall, after having warned him about his behaviour, suspending him, moving him to an alternate work location, and finding that his behaviour had not changed.

ORDER

I order, pursuant to Section 115 of the *Act*, that the Determination be cancelled.

C. L. Roberts
Adjudicator
Employment Standards