

An appeal

- by -

Ralf Froese  
("Froese")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

**ADJUDICATOR:** David B. Stevenson

**FILE No.:** 2002/400

**DATE OF HEARING:** October 29, 2002

**DATE OF DECISION:** November 5, 2002

## DECISION

### APPEARANCES:

on behalf of the individual

In Person

on behalf of 614340 B.C. Ltd.

Lawrence Wright

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by Ralf Froese (“Froese”) of a Determination of the Director of Employment Standards (the “Director”) dated July 5, 2002.

Froese had filed a complaint with the Director alleging his employer, 614340 B.C. Ltd. operating as Super Valu (“Super Valu”) had terminated his employment without cause or notice, contrary to Section 63 of the *Act*. The Determination concluded that Super Valu had shown just cause to terminate Froese’ employment and, consequently, had not contravened of the *Act*, ceased investigating and closed the file on the of complaint.

Froese says that the Director made several errors in the findings of fact and reached the wrong conclusion about whether there was just cause to terminate him.

### ISSUE

The issue is whether Froese has shown the Determination was wrong in its conclusions of fact and its conclusion that Super Valu had just cause to terminate his employment.

### THE FACTS

Super Valu operates a grocery store in Vernon. Froese worked for Super Valu from August 31, 2001 to January 30, 2002. He started with Super Valu as Produce Manager at a rate of \$12.50 an hour, but was demoted prior to November 13, 2001 to Grocery Clerk at a rate of \$8.50 an hour.

The Determination noted that because Froese’ tenure was less than one year, the issue involved whether Froese was entitled to length of service compensation in an amount equivalent to one weeks’ wages or whether that entitlement was lost because Super Valu had just cause to terminate his employment.

During the investigation, Super Valu took the position that Froese had been terminated for a continuing pattern of poor performance and work ethic and a generally unsatisfactory and negative attitude. Super Valu was represented throughout the investigation of the complaint by Tim Tomczynski, the store’s Produce Manager during the period relevant to the complaint and during the investigation. Mr. Tomczynski claimed he had spoken to Froese on several occasions, commencing November 14, 2001 and continuing right up to, and including January 30, 2002 when he terminated Froese. The Determination notes that Mr. Tomczynski did not provide Froese with any written warnings or show him any of the

notes he said he made concerning the contents of the meetings. The investigating officer was provided with a copy of all the notes made by Mr. Tomczynski.

Froese took the position that he had never been ‘disciplined’ by Mr. Tomczynski or told that his job was in jeopardy.

Froese gave evidence at the hearing. He re-iterated what he had stated during the investigation - that he had never been ‘spoken to’ by Mr. Tomczynski about his work on any of the dates indicated in the notes made by him. Froese alleged all of the notes were made up by Mr. Tomczynski after he was fired. In response to questioning from Mr. Wright, Froese agreed he had been talked to a couple of times about having changed “ends” without authorization. The matter of changing “ends” without authorization are referred to in the notes dated November 28 and December 15.

Mr. Tomczynski was unavailable to give evidence, having apparently been transferred to Calgary. Mr. Lawrence Wright, the Store Manager, gave evidence for the employer. Mr. Wright had been directly involved in the decision to demote Froese from the position of Produce Manager and had some discussions with Mr. Tomczynski about concerns he had with Froese. Mr. Lawrence had never seen the notes which Mr. Tomczynski provided during the investigation of the complaint, but had told Mr. Tomczynski he should keep a written record of any discussions he had with Froese. He identified what he understood from Mr. Tomczynski to be the basic issues of concern for him.

## **ARGUMENT AND ANALYSIS**

The burden is on Froese to persuade the Tribunal that the Determination is wrong in law, in fact or in some combination of law and fact (see *World Project Management Inc.*, BC EST #D134/97 (Reconsideration of BC EST #D325/96)). An appeal to the Tribunal is not a re-investigation of the complaint nor is it simply an opportunity to re-argue positions taken during the investigation. No new information has been provided to the Tribunal in this appeal.

I am not satisfied that Froese has met the burden on him in this appeal.

I agree that the information provided by Super Valu to the investigating officer, if accepted, shows the employer expressed to Froese their disapproval with his performance and conduct, communicated to him the standard expected and that his employment was in jeopardy if he failed to meet that standard, gave him ample opportunity to respond and did not terminate his employment before Froese had demonstrated his failure or refusal to meet the expected standard.

For Froese to be successful, he is required to show the investigating officer was wrong to have accepted the information provided, and the position taken, by the employer over the information and position taken by him. It is not sufficient for him to come to the Tribunal and, in the face of a body of evidence and analysis, do nothing more than restate the position taken during the investigation, in effect asking the Tribunal to re-assess fundamental conclusions reached during the investigation without providing a single reason why the Tribunal should respond to that request.

The appeal is dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated July 5, 2002 be confirmed.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**