

**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 -

Dan Foss Couriers (Mid Island) Ltd.  
("Foss")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Jim Wolfgang

**FILE NO.:** 97/553

**DATE OF HEARING:** October 23, 1997

**DATE OF DECISION:** November 7, 1997

**DECISION**

**APPEARANCES**

Al Hasham	Dan Foss Couriers
Lana Cyr	on her own behalf
Myron Wallace	on behalf of the Director of Employment Standards

**OVERVIEW**

This is an appeal by Dan Foss Couriers (Mid island) Ltd., (“Foss”) pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) against a Determination issued by a delegate of the Director of Employment Standards on June 25, 1997.

The Determination found that Foss contravened Section 63 of the *Act* and ordered Foss to pay compensation to Lana Cyr (“Cyr”) in the amount of \$1,280.43.

Foss filed an appeal dated July 30, 1997 of the Director’s Determination. The deadline for the appeal was July 18, 1997. The Registrar of the Employment Standards Tribunal sent a letter to Foss dated July 23, 1997 that the appeal would not be considered.

In reply, Foss, in their letter dated July 29, 1997 argued the delay was caused by incomplete and erroneous information supplied by the Employment Standards and to proceed with the appeal.

Cyr in her letter dated August 13, 1997 objected to Foss’ request to have their appeal heard.

Foss sent a subsequent letter dated August 13, 1997 asking for reconsideration under Section 109(1)(b) of the *Act*

Notification of a hearing was sent to parties on September 9, 1997.

A hearing was held on October 23, 1997 at which time I heard evidence from all parties.

**ISSUE TO BE DECIDED**

Is Cyr entitled to payment for length of service ?

**FACTS AND ARGUMENT**

Cyr was employed by a courier service that was purchased by Foss. Her employment by Foss commenced March 1, 1993.

March 24, 1997 Cyr was involved in a motor vehicle accident while on a delivery. She struck a concrete post causing extensive damage to the side of the vehicle. No other vehicle was involved.

The manager, who is no longer employed by Foss, felt Cyr was negligent in not stopping immediately on contact with the post and for not taking proper evasive action. Foss believe if Cyr had stopped and backed off the post, the damage could have been minimal.

Cyr admits she panicked and did not stop immediately.

The manager did not have the authority to discipline Cyr and as the Regional Manager in Victoria was unavailable, contacted the head office in Burnaby. As a result of that discussion Cyr was terminated for "just cause" March 25, 1997 the day following the accident.

Foss claim they did not employ drivers who had a bad driving record or had previous accidents. Foss contend that a safe driving record is a paramount employment requirement. The policy of the company is clear, any preventable accident 100% the fault of the driver will result in dismissal. Foss claim this is an industry practice. They further claim this policy is given verbally to each new employee at the time of hire.

Cyr stated she had been employed by another courier company and had an accident for which she was responsible without penalty or discipline. That company was later purchased by Foss and she was transferred to the new company. Cyr claims that she informed the manager of her driving record at the time of employment. Cyr further claims she was unaware of any policy with regards to accidents in the company vehicles and other employees who have had accidents were not terminated. This was Cyr's first accident in four years of employment with Foss.

In his investigation the delegate had found that several accidents had occurred at the location of Cyr's accident.

## **ANALYSIS**

In the correspondence tot he Tribunal the Branch manager twice made reference to:

"Due to the severity of the accident and the gross negligence on Ms. Cyr's part, we believe that immediate dismissal was justified."

The burden of proof for establishing that there is “just cause” to terminate Cyr’s employment rests with Foss. “Just cause” can include fundamental breaches of the employment relation such as criminal acts, gross incompetence, willful misconduct or an significant breach of the work place policy.

The evidence of Mr. Al Hasham (“Hasham”) at the hearing indicated a different interpretation of the policy regarding accidents. He stated the severity of the accident but only whether the driver was wholly responsible. Further, he indicated the company policy was to immediately terminated any employee found totally responsible for any accident.

When asked if the damage to the vehicle had been \$50.00 would Cyr still have been terminated ? Hasham’s answer was yes if she was at fault.

I find it difficult to accept that this accident was the result of gross negligence. This was the result of gross negligence. This was supported by the fact a number of similar accidents had occurred at the same location. We can separate a policy that calls for instant dismissal where alcohol or drugs are a factor. Also repeated traffic offenses could be grounds for discipline. None of these elements appear to have been present in Cyr’s accident. Under the Foss policy an employee has no opportunity to correct any defiance that may exist.

We have no evidence to indicate that an employee who is involved in an accident is at any greater risk of another accident in the future.

In order for such a serious penalty to be applied we must be satisfied the employer has provided the following:

1. Reasonable standards of performance had been set and communicated to the employee;
2. The employee was warned clearly his/her continued employment was in jeopardy if such standards were not met;
3. A reasonable amount of time was given to the employee to meet such standards; and
4. The employee did not meet those standards.

Foss did not provide their policy on vehicle accidents in writing to new employees. That would seem to be a minimum requirement for such an extremely serious policy.

As the Branch Manager is no longer employed by Foss and did not attend the hearing we must rely on the statement of Cyr that she had not been informed of this policy at that time of hire or during her employment with Foss.

I find that Cyr was not terminated for “just cause” and therefore, is entitled to compensation for length of service as outlined in the determination.

**ORDER**

I order, under Section 115 of the *Act*, the Determination dated June 25, 1997 against DanFoss Couriers (Mid Island) Ltd., be confirmed.

**Jim Wolfgang**  
**Adjudicator**  
**Employment Standards Tribunal**

JW:sr