

An appeal

- by -

Ryan Routley  
("Routley")

- 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.:** 2002/473

**DATE OF DECISION:** December 10, 2002

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by Ryan Routley (“Routley”) of a Determination of the Director of Employment Standards (the “Director”) dated August 12, 2002.

Routley had filed a complaint with the Director alleging his employer, Ashland Canada Corp. (“Ashland”) had terminated his employment without cause or notice, contrary to Section 63 of the *Act*. The Determination concluded that Ashland had shown just cause to terminate Routley’s employment and, consequently, had not contravened of the *Act*, ceased investigating and closed the file on the of complaint.

In this appeal, Routley says there were facts the Director did not consider and the failure to consider those facts led to the wrong conclusion about whether Ashland had just cause to terminate him

### ISSUE

The issue is whether Routley has shown the Determination was wrong in its conclusion that Ashland had just cause to terminate his employment.

### FACTS

Ashland is a purchaser of bulk quantities of chemicals and plastics. Routley was employed by Ashland, and its predecessor, from early May 1994 until his dismissal on May 8, 2001, as a truck driver/handler. At the time of his dismissal his wage rate was \$21.66 an hour, based on a 40 hour week. It is not disputed that Routley was dismissed from his employment on May 8, 2001, without notice or compensation in lieu of notice. The matter in dispute in the investigation was whether Ashland had just cause for terminating his employment.

The Determination set out the respective positions of the parties in some detail, which I do not need to restate, noting that there was “no shortage of contradictory information” provided by Routley and representatives of Ashland during the investigation. For his part, Routley alleged his termination was in retaliation for his attempt to have a trade union organize the business, for complaining to his manager that he was being harassed by his supervisor and for giving his manager a bad review on the company’s yearly evaluation report. Ashland denied the allegations made by Routley and submitted that Routley was terminated for conduct which amounted to insubordination and included, but was not limited to, repeated and unacceptable behaviour towards his superiors and others, repeatedly ignoring directions from management and uttering verbal threats against his manager, and for “serious lapses in judgement (which) undermined the principles set forth in Ashland’s harassment policy”. Ashland provided the Director with documentation relating to several incidents involving Routley and follow-up discussions relating to those incidents. Those documents were attached to the Determination.

The Determination set out the following findings and comments:

Given the contradictory nature of the evidence, it is impossible to confirm with certainty that the complainant threatened the manager. However, when one reviews the harsh and critical comments from Mr. Routley's submissions, his silence in matters of significance and the employer's reports of his conduct, it is more likely than not that it did occur. This incident, coupled with the persistent behavioural wrangling, despite warnings of the consequences of same, would constitute grounds for a just cause dismissal.

## **ARGUMENT AND ANALYSIS**

It is initially the employer's burden to show just cause for termination. Ashland has met that burden and does not have to re-establish just cause in this appeal. Rather, the burden is on Routley 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.

In his appeal, Routley raises several points: first, that since he has been gone from the company other employees have told him about problems with his former supervisor and manager; these employees were never talked to; he got no help from Ashland's Human Resources people; that the manager was lying about being threatened by him; and a manager has quit the company after eighteen years.

In responding to the appeal, the Director submits that Routley has, apart from continuing to deny he made threats and alleging the manager was lying about that, has not contradicted or provided any evidence to refute the body of evidence acquired during the investigation and which on the whole supported the conclusion reached. In its replies, Ashland adopts the position taken by the Director and reiterates its position that Routley was terminated for cause.

I agree with the submission of the Director. Routley has not provided any factual basis for altering or rejecting the findings made and conclusions reached in the Determination. As I have indicated above, an appeal is not simply an opportunity to re-argue positions taken during the investigation. If Routley wishes this Tribunal to reach conclusions that are different from those made by the Director, he is required to show a valid reason for doing so. Doing no more than restating a position that was not accepted in the first place does not satisfy that requirement. On the face of the Determination, the conclusions made by the Director are analytically sound and appear to be both reasonable and rationally grounded in the available evidence. None of the other points raised in the appeal appear to have any relevance to the decision relating to his termination. The termination was based on Routley's own conduct and while it may well be that other employees have experienced problems with his former supervisor and manager, those 'problems' neither explain nor justify that conduct.

The appeal is dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated August 12, 2002 be confirmed.

---

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