

An appeal

- by -

Raymond A. Dixon  
("Dixon")

- 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:** Cindy J. Lombard

**FILE No.:** 2001/383

**DATE OF HEARING:** August 23, 2001

**DATE OF DECISION:** October 22, 2001

## DECISION

### APPEARANCES:

The appellant/employee, Raymond Dixon (“Dixon”) appeared on his own behalf.

For the respondent/employer, Westbank Packers Ltd.” (“Westbank Packers”)

Angus Cameron, Representative

Trevor Marshall, General Manager

Don Smith, Plant Manager

Dave Haan, Floor Supervisor and Lead Hand

### OVERVIEW

This is an appeal by the employee, Dixon, pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) of a Determination which was issued April 30, 2001, finding that the employer, Westbank Packers, has just cause to dismiss the employee, Dixon, without notice or compensation in lieu of notice.

### ISSUE TO BE DECIDED

Is the employer, Westbank Packers, liable to pay compensation in lieu of reasonable notice to the employee, Dixon, or is Westbank Packers excused from liability pursuant to Section 63(3)(c) of the *Act* on the grounds that it had just cause for the dismissal of Dixon.

The onus is on the appellant, Dixon, to show that the Determination was wrong.

### FACTS AND ANALYSIS

Dixon was employed by Westbank Packers, a fruit packing plant, between September 1996 and November 24, 2000, to do bin repair and as a first aid attendant when the need arose.

On November 24, 2000, Dixon’s employment was terminated without notice following a physical altercation between Remi Gamache (“Gamache”), whose employment was also terminated, and Dixon.

a) According to Dixon

Dixon’s evidence is that he was defending himself from an assault by Gamache.

Dixon was on that date working outside the plant performing bin repair but says that he was authorized to enter the plan building at any time in his capacity as a first aid attendant.

Dixon did enter the plant not because first aid was necessary but to remove a bin and exchange a bin that was being improperly used to put leaves in.

Dixon drove a forklift into the plant to pick up the bin. He says that Haan and Gamache approached him after he had picked up the bin with the forklift and Gamache told him to grow up and leave the bin. Dixon decided since he already had the bin on the forklift to continue and began to back up to leave the plant with the bin. Dixon then heard a “clump” as the bin fell off the lift and Gamache reached in and turned the forklift off saying, “you are not allowed to drive that in here.” Dixon says that he replied, “I am because I’m first aid.” As Dixon got off the forklift, he says the Gamache hit him and a fight started. Dixon says that Haan did not ask him to return to bin repair until after the altercation broke out.

b) According to the employer, Westbank Packers

i) Dave Haan

Haan says that a bin was being improperly used for leaves, however, it was not concern to him as the floor supervisor because at that time it was two-thirds full and in another hour it would be full and then emptied and could be returned to bin repair.

Haan first noticed a heated exchange taking place between Dixon and Gamache and so he approached them. At that point he did not know who was right or wrong but simply wanted to get them separated. Haan says that Dixon came into the plant and pointed out that Gamache was the using the wrong bin. Haan asked him to leave to preserve egos. Dixon then left but reentered the plant. Haan says that he told Gamache to go to a corner of the plant and told Dixon, who was on the forklift with it running and starting to back out to leave the plant, to get off the forklift and return to bin repairs. Haan says he reached in and turned off the forklift.

Gamache then returned to where Dixon and the forklift were and pulled the bin off the forklift. Dixon jumped off the forklift and Gamache and Dixon ran towards each other and the altercation began.

Haan continued to try to separate the men. By the time the altercation ended, the whole plant had shut down.

ii) Don Smith, Plant Manager

Mr. Smith has been the plant manager for 9 years.

On the date of the incident, Haan located him and told him what had occurred. It was Mr. Smith’s feeling that the altercation would not have occurred if Dixon had followed his supervisor, Haan’s request to leave the plant and return to bin repair.

In addition, Dixon had been involved in two previous fights during work, the first on November 27, 1996. Dixon had grabbed a fellow employee by the ears (“Everson”) and yelled and spat in his face. Dixon received a verbal warning following this incident.

On September 5, 1997, another incident occurred between Dixon and Tim Vollans. Don Smith himself broke up this altercation and issued both a verbal and written warning that his employment was in jeopardy, i.e. that he would be fired if another incident occurred. A copy of the written warning is attached hereto as Schedule “A”.

Mr. Smith made a decision that both Dixon’s and Gamache’s employment should be terminated. This was a major incident causing the whole plant to shut down with likely some fault on the part of both them.

Section 63(1)(b) of the *Act* provides that after nine years of employment, the appellant would be entitled to eight weeks wages in lieu of notice. This liability is deemed to be discharged by Section 63(3)(c) if the employee “...is dismissed for just cause.”

The burden of proving that the conduct of Dixon justifies dismissal is on the employer, Westbank Packers.

The employer may establish just cause by proving:

- a) that reasonable standards of performance have been set and communicated to the employee;
- b) that the employee was warned clearly that his or her continued employment was in jeopardy if such standards were not met;
- c) a reasonable period of time was given to the employee to meet such standards; and
- d) the employee did not meet those standards.

Westbank Packers has clearly discharged its onus of demonstrating that Dixon was dismissed for just cause.

Dixon was clearly warned, most recently in the letter which is Schedule A, that should another outburst of “temper/fighting/violence/assault occur on the job” that he would be immediately dismissed. Another incident did occur which could have been avoided had Dixon followed his supervisor’s (Haan) instruction that Haan would deal with the issue of using the wrong bin and later instructing him to leave the plant.

The reasonable standards expected by the employer were clearly laid out to Dixon and he did not meet those standards.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination finding that the *Act* has not been contravened by Westbank Packers, be confirmed.

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**Cindy J. Lombard**  
**Adjudicator**  
**Employment Standards Tribunal**