

An appeal

- by -

International Steelworks Industries Ltd.
("ISI")

- 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.: 2001/394

DATE OF HEARING: October 4, 2001

DATE OF DECISION: October 22, 2001

DECISION

APPEARANCES:

on behalf of Industrial Steelworks Industries Ltd.	Dan Gray Tina Hansen
on behalf of the individual	In person

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Industrial Steelworks Industries Ltd. (“ISI”) of a Determination that was issued on April 27, 2001 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that ISI had contravened Part 8, Section 63 of the *Act* in respect of the termination of the employment of Mike Hodson (“Hodson”) and ordered ISI to cease contravening and to comply with the *Act* and to pay an amount of \$1281.70.

ISI challenges the conclusion of the Director that Hodson was entitled to length of service compensation. ISI contends they should have been deemed discharged from any liability to pay Hodson length of service compensation under subsection 63(3) of the *Act* because Hodson gave ISI just cause for his dismissal. More specifically, ISI argues the Director failed to give sufficient weight to warnings given to Hodson about his performance and tardiness and erred in concluding ISI had not shown that Hodson had falsified his time card.

ISSUE

The issue is whether ISI has shown it had just cause to dismiss Hodson.

THE FACTS

ISI is a steel fabricating business operating in Kelowna. Hodson was employed by ISI from August 18, 1999 to December 14, 2000 as a welder at the rate of \$15.00 an hour. His employment was terminated without notice on December 14, 2000.

ISI said Hodson had been terminated for cause, citing poor work performance and falsifying his time card on December 13, 2000. The particulars of the latter reason were that on December 13, Hodson was scheduled to commence work at 7:00 am. He was late. That fact is undisputed, although there was some dispute about how late he was. During the investigation, ISI suggested he was not present at the work site until 7:30 am; Hodson said he was explaining to his temporary foreman, Fred Ward, why he had been late at 7:10 am. On his time card for the day, Hodson indicated he had stated work at 7:00 am. He knew that was not the case, but said there

was a practice allowing employees to make up the time by working breaks or continuing working after the scheduled end time. Hodson said he worked part of his lunch break to make up the time.

The Determination noted that ISI was unable to produce any evidence showing Hodson had been warned, either verbally or in writing, that his performance was unacceptable and that his employment would be terminated if it did not improve. While one of the grounds raised in the appeal was that insufficient weight had been given to warnings given to Hodson about his performance, that matter was not pursued at the appeal hearing. No evidence was provided showing that Hodson had ever been warned, either verbally or in writing, about his performance.

In its appeal, ISI stated:

Mike Hodson's foreman at the time - Mr. Cam Haslen - has commented to Sherri Lampman, Human Resources Administrator that the "common practice of making up time . . . was not an accepted practice in his shop. . . . steelworks has contacted Mr. Haslen to get a signed written statement . . .

No written statement was ever provided to the Tribunal. ISI, and more particularly, Mr. Gray, who appeared on behalf of ISI, was hindered in his ability to present this appeal by the fact that neither Mr. Haslen nor Ms. Lampman were any longer employed by ISI and neither were present to provide evidence at the hearing.

Three additional matters should be noted. First, on December 13, 2000, Hodson worked until 2:00 pm and was paid for 6.5 hours of work. Second, Hodson's time card for the day was approved by Mr. Ward. Third, on the same day, ISI held a meeting of employees at 2:00 pm, which lasted approximately 15 minutes, that all employees, including Hodson were told to attend. Hodson attended that meeting.

ARGUMENT AND ANALYSIS

The Tribunal has addressed the question of just cause on many occasions. In all cases the burden of proving the conduct of the employee justifies termination is on the employer. The Director was not persuaded that burden was met and, based on the evidence, I am not persuaded that ISI has met that burden, either. Marking a time card incorrectly is not, of itself, misconduct by an employee. The misconduct arises from the likelihood that in falsifying a time card an employee is committing an act of dishonesty, attempting to "steal" time from his or her employer. In this case, there is no evidence that Hodson was acting dishonestly or that he was "stealing" time from his employer. He says he was about ten minutes late. He spoke with Mr. Ward when he arrived at work. He says he worked through part of his lunch to make up the time he was late. All of that provides a reasonable explanation for how the time card was marked and indicates there was no dishonest conduct or intention. ISI has not shown any of that explanation to be wrong. As well, Mr. Ward approved his time card, and that fact provides some support for what Hodson has

said. Hodson gave the employer an additional fifteen minutes that day to attend a meeting on their instruction. He was paid for 6.5 hours of work that day and there is no indication he was not entitled to be paid that amount. Overall, there is no basis for concluding Hodson “stole” any time from ISI and, consequently, there is no reason for dismissal based on the time recorded on his time sheet.

No evidence was presented to show the Determination was wrong in concluding that ISI had failed to show Hodson had been warned about his performance in a way that brought home the seriousness of the problem and placed him on notice that his job was in jeopardy.

This appeal must be dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated April 27, 2001 be confirmed in the amount of \$1,281.70, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal