

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act S.B.C. 1995, C. 38*

- by -

Claymore Collision Ltd. operating as Boyd Auto Body & Glass Poco  
("Boyd Auto")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE NO.:** 96/566

**DATE OF HEARING:** January 10 1997

**DATE OF DECISION:** January 19, 1997

**DECISION**

**OVERVIEW**

The appeal is by Claymore Collision Ltd. operating as Boyd Auto Body & Glass Poco (“Boyd Auto”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) against Determination # CDET 003936 of the Director of Employment Standards (the “Director”), a decision dated September 11, 1996. In the Determination Roy A. Sackman is found to be owed compensation for length of service.

The appeal alleges that Sackman was dismissed for just cause.

**APPEARANCES**

Ronald W. Thomson

Owner of Boyd Auto

Jim Dunne

For the Director

**ISSUE TO BE DECIDED**

The issue to decide is whether Boyd Auto had just cause in terminating Sackman. The employer argues that it did as a result of Sackman’s work on a particular vehicle, which is said to be of a fraudulent nature, and because he had been given clear warning that further substandard work would lead to his being terminated.

**FACTS**

Roy Sackman is a journeyman body repairman. His employment by Boyd Auto lasted from October 1, 1995 to June 27, 1996.

Sackman had the skills to do the work for which he was hired but his work was not always up to Boyd Auto’s standards, which is to say, Ron Thomson’s standards, the owner of the shop. Other employees confirm that Thomson spoke to Sackman about the poor quality of his work on at least two occasions. Sackman says that Thomson did not always apply the same standard. Thomson says that Boyd Auto Poco does quality work and that he knows his business. His shop is ICBC accredited and BCCA preferred and Thomson himself has worked as a painter of Jaguar cars at the company’s factory in the United Kingdom, is a past chairman of his trade association and has been in the autobody repair business for many years.

Approximately one month before being terminated, Sackman was assigned a Honda to repair and he reinstalled its old light assembly rather than the new parts which had been ordered for the car. The customer, who had been referred to Boyd Auto by a Honda dealer, discovered what had

happened. The new parts were installed but on hearing what had happened, the dealer ceased referring people to Boyd Auto for three months. Thomson says that he told Sackman that if he ever did that sort of work, careless work, again, he would be fired.

In the case of cars repaired by Boyd Auto, an assessment is made of the number of hours that repairs require. The repairman is paid for those hours, regardless of whether the job takes less time or more time.

Sackman was fired as a result of his work on a Jeep Cherokee. Repairing its bodywork was judged to be a 10 hour job and Sackman was assigned the job. He completed the work on a Thursday and was paid for it as he left for a short Las Vegas vacation. The next day, the shop's painter found the finish of Sackman's work to be substandard and as other employees undertook repairs it was discovered that Sackman had failed to pull out large dents but simply filled them with plastic filler. He was fired on returning to work the following Monday. According to Thomson, Sackman's work on the Jeep was unprofessional and quite unacceptable. He says that Sackman worked only 3 hours on the Jeep and he refers to Sackman's attempt at repairs as "faking a job" and fraudulent.

Sackman says that he was fired because an employee had returned from a leave of absence and no longer needed Sackman. It is the testimony of Thomson that on firing Sackman he hired another bodyman. He says that Sackman was fired only because his work "was a detriment to ... customers' vehicles and (Boyd Auto's) business reputation".

## **ANALYSIS**

The onus is on the employer to show just cause.

A single deliberate act of a most serious nature can cause such damage to the employment relationship that there is just cause for an employee's termination. Less serious infractions, when repeated, or a consistent failure to perform work may also constitute just cause but in such cases an employer must show that:

- a) Reasonable standards of performance have been set and communicated to the employee,
- b) the employee was clearly and unequivocally warned that his or her employment was in jeopardy if such standards were not met,
- c) the employee is given reasonable time to meet the standards, and
- d) the standards are not met by the employee.

As matters are presented to me, I conclude that Sackman is not guilty of a serious breach of the employment relationship but repeated examples of careless work and a disregard for Boyd Auto standards, in other words a consistent failure to perform work as required.

I am satisfied that Sackman knew what was expected of him in terms of his work. Sackman is a journeyman after all. I am satisfied as well that shop standards were communicated to Sackman

through the discussion of repairs to vehicles assigned to him. What I am not able to verify is whether Thomson made it plainly clear to Sackman that his continued employment was in jeopardy unless he improved.

The Director's delegate found that he could not establish that Sackman was "clearly and unequivocally put on notice that his employment may be terminated". He indicates that Sackman was warned about his work but on interviewing other employees, that he was unable to corroborate Thomson's assertion that Sackman was told that his job was in jeopardy unless there was improvement. I have only that same uncorroborated testimony on which to rely.

An appeal under Section 112 of the Act is of limited scope. It is not a complete re-examination of all issues but an appeal of a particular determination by a Director's delegate. The appellant must show how the determination is wrong. That has not be done in this case. In the absence of any hard evidence that Sackman was warned as required, I must confirm the determination.

**ORDER**

I order, pursuant to Section 115 of the *Act*, that Determination # CDET 003936 be confirmed.

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**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**

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