

BC EST # D222/96

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 -

Coffee-Mac's Enterprise Ltd. and JPT Enterprises Ltd.
Associated Corporations Pursuant to Section 95 of the Employment
Standards Act
("Coffee-Mac's")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

FILE NO.: 96/374

DATE OF DECISION: August 22, 1996

DECISION

OVERVIEW

This is an appeal by Coffee-Mac's Enterprises Ltd. and JPT Enterprises Ltd., associated corporations pursuant to Section 95 of the *Act* ("Coffee-Mac's") pursuant to Section 112 of the *Employment Standards Act* (the "*Act*") of Determination No. CDET 002428, dated May 30, 1996. Coffee-Mac's was found to have contravened Section 63(2) of the *Act* when it terminated Kelly Lambert from its employ. Coffee-Mac's says it had just cause to terminate Kelly Lambert.

I have conclude my review of the file and have determined this appeal can be decided without a hearing.

ISSUE TO BE DECIDED

The issue is whether Coffee-Mac's has established just cause to terminate Kelly Lambert.

FACTS

Kelly Lambert commenced his employment with Coffee-Mac's on January 3, 1995. He was employed as a janitorial/maintenance person. Apparently, Mr. Lambert had some problems attending work on a regular basis and on June 22, 1995 he was issued a letter of reprimand.

The letter of reprimand concluded with the statement: "any further infractions will be dealt with accordingly". After the warning Mr. Lambert's attendance improved. In early 1996, Mr. Lambert missed a number of days of work. Following one such absence, Mr. Lambert's time card was removed. When Mr. Lambert, upon his return to work, asked where the card was he was told he was terminated. His final day of work was February 1, 1996.

ANALYSIS

The burden of establishing just cause for termination is on the employer. In the absence of just cause the employer must either pay the employee length of service compensation or give the employee proper notice of termination.

The Tribunal has determined there are four things an employer must demonstrate to establish just cause:

1. Reasonable standards of performance have been set and communicated to the employee;
2. Discipline has been given to the employee for failure to meet the standards set, which includes ensuring the employee has been made aware their continued employment is in jeopardy if there is a further breach of the standard;
3. A reasonable period of time has been given to the employee to meet the standard; and
4. The employee did not meet those standards.

In this case, Coffee-Mac's has not established just cause. Specifically, they have failed to establish any clearly communicated standard for attendance or that Mr. Lambert was adequately warned that his continued failure to meet some set standard would jeopardize his employment.

The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that Determination No. CDET 002428 be confirmed in the amount of \$619.48.

David Stevenson
Adjudicator
Employment Standards Tribunal

DS:sr