

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act R.S.B.C. 1996, C. 113*

- by -

Para Space Landscaping Inc.

(“Para Space”)

- of a Determination issued by -

The Director Of Employment Standards  
(the “Director”)

**ADJUDICATOR:** Lorna Pawluk

**FILE NO.:** 97/008

**DATE OF HEARING:** June 13, 1997

**DATE OF DECISION:** June 18, 1997

**DECISION**

**APPEARANCES**

Steve Tifenbach      For Para Space  
Pat Cook              For the Director

**OVERVIEW**

This is an appeal by Para Space Landscaping Inc. (“Para Space”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from Determination No. CDET 004942 issued on December 11, 1996. In this appeal, Para Space claims that it had just cause to dismiss Kenneth Clark (“Clark”).

**ISSUE TO BE DECIDED**

The issue is whether Para Space had just cause under section 63 of the *Act* to terminate the employment of Kenneth Clark.

**FACTS**

Clark was employed as a labourer for Para Space. On August 26, 1996, his employment was terminated for poor work performance. Clark had been issued a letter of warning on August 14, 1996:

Consider this to be written warning. Your productivity and attention to detail must improve immediately. If not, termination will be incurred.

On August 21, 1996, Clark advised the employer that he had accepted a higher paying job elsewhere and would be leaving in two weeks. On August 26, 1996, Clark reported for work one hour late. His supervisor thought that he had displayed a bad attitude and told him to go to the office to pick up his check as his employment was being terminated for bad attitude, tardiness and previous memo.

In the Determination under appeal here, the Employment Standards Officer (ESO) concluded that Clark had been wrongfully dismissed and ordered payment of wages in lieu of notice in the amount of one week's salary. She found that there was evidence of improvement in three Supervisor Monthly Reviews following the letter of warning. She found that since punctuality had not been a concern in the past, it was not just cause to terminate the employment.

**ANALYSIS**

While an employer can dismiss an employee for a bad attitude, it takes convincing and compelling evidence over the long term of an attitude counter productive to work and to work place harmony. Here, the single incident of “attitude” does not suffice to establish just cause. Nor does the isolated incident of lateness of one hour. Again, tardiness, while not to be condoned on the work site, is not grounds for termination where it is, as here, a single isolated event. Finally, with respect to Clark’s work performance and attention to detail, I agree with the ESO that his work performance had improved.

**ORDER**

Pursuant to section 115 of the *Act*, I order that Determination No. CDET 004942 be confirmed.

**Lorna Pawluk**  
**Adjudicator**  
**Employment Standards Tribunal**