

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-

La Bianco Trading Ltd.
("La Bianco")

-of a Determination issued by-

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 95/010

DATE OF DECISION: May 3, 2001

DECISION

OVERVIEW

This is an appeal by La Bianco Trading Ltd. (La Bianco) pursuant to Section 112 of the *Employment Standards Act* (the "Act") against Determination Number CDET 000076 issued by a delegate of the Director ("Director's delegate") on November 14, 1995. The Determination was issued following a complaint by Kit Fung (Amy) Leung ("Leung") that she was owed wages by La Bianco. Kumi Carswell ("Carswell"), President of La Bianco, states that the reason for this appeal is that "Ms. Leung told me that she made false resume. Therefore, I had extra time training taken from her. She told me that she is going to get earrings back."

In a letter dated December 18, 1995 the Tribunal provided La Bianco and Leung with copies of information provided by the Director. La Bianco and Leung were advised that if they wished to make a written reply then they were to do so by January 11, 1996. On January 4, 1996, Carswell telephoned the Registrar of the Tribunal and advised that she would be out of the country until January 12, 1996 and needed an extension to January 19, 1996 in order to respond to the Director's information. The Registrar granted the extension.

La Bianco did not make any written reply. The submission of Leung did not contain any new facts. I have completed my review of the information provided by the parties on this appeal.

FACTS

Leung was employed by La Bianco as a salesperson from September 17, 1995 to September 25, 1995. Her rate of pay was \$6.50 per hour. She submitted a complaint on October 12, 1995 concerning the non-payment of wages. The Director's delegate issued a Determination on November 14, 1995 in the amount of \$216.32 representing wages for 32 hours of work plus vacation pay.

In a letter to La Bianco dated November 14, 1995 the Director's delegate writes:

"As I explained to you on the telephone, employers must pay employees wages for all hours worked, included time for training for the purposes of an employer's business. Ms. Leung alleges that you wished to deduct 6 hours of worked time from her wages for a training period.

In addition, you explained that Ms. Leung's cheque was also going to be deducted for some earrings that she sold for the incorrect price. Section 21 of the *Employment Standards Act* states that employers may not withhold, deduct or require payment of all or part of an employee's wages for any purpose including an employer's business costs."

In the notes to file dated October 31, 1995 the Director's delegate writes:

“Employer phoned. Said employee sold earrings for \$21.00 that were supposed to be sold for \$89. Employee lied about experience and quit without notice. She sent employee a cheque, deducting the cost of the earrings and the training time. Employee returned cheque. She doesn't want to pay full amount because of employees attitude.”

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Leung is owed wages in the amount calculated by the Director's delegate.

ARGUMENTS

Carswell states that the reason for this appeal by La Bianco is that “Ms Leung told me that she made false resume. Therefore, I had extra time training taken from her. She told me that she is going to get earrings back.”

Leung denies she made a false resume and denies she told La Bianco she was going to get the earrings back.

On October 18, 1995 Leung received a cheque from La Bianco for \$149.00. Leung claims six hours of work was deducted for training and \$20.00 was deducted for selling a pair of earrings at the wrong price. Leung returned the cheque as it was incorrect. She argues she received no training and the earrings were sold at the price listed by La Bianco. She claims she worked 32 hours and is entitled to be paid the amount of wages calculated by the Director's delegate.

ANALYSIS

The onus in this appeal rests with the appellant, La Bianco. The information provided by the Director, copies of which were provided to La Bianco and Leung, indicates Leung worked 32 hours and is not in receipt of payment for these hours of work. La Bianco has provided no argument to dispute this information. In addition, the information provided by the Director indicates La Bianco wanted to deduct part of Leung's wages for training time and for a sales mistake. In its appeal, La Bianco admits it had “extra training time taken from (Leung)”.

Section 21(1) of the *Act* prohibits an employer from withholding wages from an employee for any reason, except for income tax, CPP, UIC and a court order to garnishee an employee's wages. Section 21 (2) of the *Act* prohibits an employer from requiring an employee to pay any of the employer's business costs by withholding the employee's wages. This means that La Bianco cannot deduct or withhold wages from Leung because she allegedly provided them with a false resume or sold earrings at an incorrect price.

In addition, La Bianco cannot deduct wages from Leung for training time. Under Section 1 (1) of the *Act*, the definition of an employee includes a person being trained by an employer for the employer's business. Accordingly, if Leung was trained by La Bianco for La Bianco's business, then she is considered for the purposes of the *Act* to be an employee of La Bianco, and she is entitled to be paid wages for all hours worked.

Given the above, I conclude that La Bianco has not met the onus of proving that Leung is owed anything less than the amount calculated by the Director's designate.

ORDER

Pursuant to Section 115 of the *Act*, I order that Determination #CDET 000076 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal

May 3, 2001

Date

NE:sd