

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act

-by-

Thornhill Motors Ltd.

(“Thornhill”)

-of a Determination issued by-

The Director Of Employment Standards

(the “Director”)

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 95/033

DATE OF DECISION: February 5, 1996

DECISION

OVERVIEW

This is an appeal by Thornhill Motors Ltd. ("Thornhill") pursuant to Section 112 of the *Employment Standards Act* (the "Act") against Determination #CDET 000386 issued by a delegate of the Director of Employment Standards (the "Director") on December 8, 1995. In this appeal Thornhill claims that it is entitled to recover moneys allegedly owed to it by Jason Smith ("Smith") by making deductions from Smith's wages.

The Determination issued by the Director was based on a finding that Smith had not made a written assignment of wages to Thornhill as required under Section 22 of the *Act*.

I have completed my review of the written submissions made by Thornhill, Smith and the information provided by the Director.

FACTS

Smith was employed as a sales consultant by Thornhill from October 12, 1994 to February 4, 1995.

Smith was enrolled to attend a Professional Auto Sales course at The Automotive Training Centre in Richmond, British Columbia from January 23, 1995 to January 28, 1995. The tuition costs for the course was \$952.30 including G.S.T. This amount was paid in full by Thornhill on behalf of Smith. Smith incurred travel and accommodation costs which he estimates totalled approximately \$779.00. Smith and Thornhill entered into a verbal agreement by which the tuition costs for the course would be paid by Thornhill on behalf of Smith.

Thornhill states its understanding of the verbal agreement as being that it would "...lend the necessary funds to (Smith) with the understanding that he would reimburse the company through payroll deductions" Thornhill also offered to rebate the course tuition fees to Smith if he "successfully completed one year's employment" following the course.

Smith states his understanding as being that Thornhill would "...float me the money for the course"...but he would pay all travel/accommodation costs and the tuition payments made by Thornhill on behalf of Smith would be deducted from his pay cheques.

Smith completed the course on January 28, 1995 and returned to work until February 4, 1995 when he resigned his employment with Thornhill.

Thornhill deducted two amounts totalling \$372.34 from Smith's earnings in January, 1995 and February, 1995

On November 28, 1995 Thornhill filed a Notice of Claim in B.C. Provincial Court to collect all outstanding amounts plus interest.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether the deductions made by Thornhill from Smith's wages were made contrary to the *Act*.

ARGUMENTS

The Director's position on the issue to be decided was set out in Schedule A which was attached to the Determination. In summary, the Director's position is that:

The nature of any verbal agreement or undertakings between Smith and Thornhill is "...beyond the scope" of its investigation under the *Act*; there was no written assignment of wages as required under Section 22 of the *Act*; and in the absence of a written assignment, the deductions made by Thornhill are contrary to the *Act*.

The essence of Thornhill's argument is that it entered into a verbal agreement with Smith and it wishes to enforce that agreement to recover the monies it paid to The Automotive Training Centre on behalf of Smith.

Smith argues that he was required by Thornhill to enroll in the Professional Sales Training course and that he should not be required to reimburse any monies to Thornhill.

ANALYSIS

Section 21(1) of the *Act* states:

Deductions

21.(1) Except as permitted or required by this Act or any other enactment of British Columbia or Canada, an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose.

Section 22(1)(4) of the *Act* states:

Assignments

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- An employer may honour an employee's written assignment of wages to meet a credit obligation.

It is important to note that throughout Section 22 of the *Act* the phrase **written** assignment of wages is used.

Section 21(1) prohibits an employer from withholding wages for any reason, including unauthorized deductions. No deductions of any kind can be made without the employee's written authorization, except for income tax, CPP, and UIC, or a court order to garnishee and employee's wages.

Section 21(2) reinforces that employees are not responsible to pay any employer's business costs. Employers are prohibited from requiring employees, directly or indirectly, to contribute towards the costs of the employer's business by:

- withholding their wages
- requiring that wages be returned to the employer
- requiring employees to pay any money to the employer

Under Section 22(4) of the *Act*, employees may arrange for assignments to meet a personal credit obligation. This obligation cannot be one that is coerced by the employer, such as a setoff or an assignment of wages to the employer.

Assignments must be made in accordance with written instructions from the employee. The employer can choose whether or not to honour the assignment requested by the employee.

In this case it is not necessary for me to decide what contractual rights and obligations exist between Thornhill and Smith.

This is so because Section 4 of the *Act* States:

The requirements of this *Act* or the Regulations are minimum requirements, and an agreement to waive any of those requirements is of no effect, subject to Sections 43, 49, 61 and 69.

Thus, whatever verbal agreement exists between Smith and Thornhill is not relevant to deciding this appeal.

ORDER

Based on the facts and my analysis as set out above I have concluded that Thornhill has contravened Section 21(1) of the *Act* by deducting \$372.34 from Smith's wages without written authorization.

In summary, I order pursuant to Section 115 of the *Act*, that Determination #CDET 000386 dated December 8, 1995 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

February 5, 1996
Date

GC:sd