

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 -

432468 B. C. Ltd.
Operating as Movies Movies

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 152/98

DATE OF DECISION: April 7, 1998

DECISION

OVERVIEW

This is an appeal by 432468 B. C. Ltd. (the “Employer”) against a Determination (CDET # 7544) which was issued on February 17/98 by a delegate of the Director of Employment Standards (the “Director”). The Director’s delegate determined that a former employee, Lorraine Daigle, was entitled to be paid \$64.54 (including interest as of February 17, 1998) on account of unauthorized deductions having been made from Ms. Daigle’s wages by the Employer.

The Determination contains a summary of the information provided by Ms. Daigle to the Director’s delegate and also contains the following statement:

The Employer was made aware of Ms. Daigle’s allegations with respect to the deductions by telephone and with a follow-up conversation in person at his business premises. In both conversations, he stated the deductions were cash advances and he would provide evidence to substantiate his statement. The Employer did not submit any information.

In its Reasons for Appeal, the Employer acknowledges that it made certain deductions from Ms. Daigle’s wages as a means of defraying or recouping certain of its business costs. It also acknowledges that it made the deductions from Ms. Daigle’s final paycheque as it considered the amount to be a “cash advance.”

ANALYSIS

Section 21 of the *Act* prohibits an employer from making any unauthorized deductions from an employees wages:

Section 21, 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.
- (2) An employer must not require an employee to pay any of the employer's business costs except as permitted by the regulations.
- (3) Money required to be paid contrary to subsection (2) is deemed to be wages, whether or not the money is paid out of an employee's gratuities, and this Act applies to the recovery of those wages.

The Employer’s reasons for appeal do not dispute the findings of fact made by the Director’s delegate.

Section 114(1)(c) of the *Act* allows the Tribunal to dismiss an appeal if it is “...frivolous, vexatious or trivial or is not brought in good faith.” Black’s Law Dictionary (6th edition) defines “frivolous” as:

A pleading (which) is clearly insufficient on its face and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purpose of delay or to embarrass the opponent. A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense.

Similarly, a frivolous appeal is defined as “...one in which no justiciable question has been presented and appeal is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed.”

The Employer bears the onus of proving its case. To have some prospect of meeting that onus the Employer must submit some evidence or argument which challenges the material point in the Determination. When I review the Determination, the Employer’s appeal and the parties’ submissions I find that this appeal is devoid of merit because the Employer has not made any submission nor given any evidence to challenge or controvert the findings made by the Director’s delegate in the Determination. I also find that the Employer has not challenged the rationale set out in the Determination.

For all of these reasons, I dismiss the appeal under Section 114 of the *Act* as I find that it is a frivolous appeal.

ORDER

I order, under Section 115 of the *Act*, that the Determination dated February 17, 1998 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal