

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act

- by -

Vancast Investments Ltd.
("Vancast")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 95/024

DATE OF DECISION: February 9, 1996

DECISION

OVERVIEW

This is an appeal by Vancast Investments Ltd. ("Vancast"), pursuant to Section 112 of the *Employment Standards Act* (the "Act") against Determination # CDET 000224 which was issued by the Director of Employment Standards (the "Director") on November 28, 1995. Vancast submits this appeal because it believes that Ronald James Ayers ("Ayers") owes it \$2,409.53 which he received allegedly through fraudulent credit card transactions.

In its written submission dated January 18, 1996 to the Tribunal, Vancast agrees that gross wages owing to Ayers amount to \$657.47.

FACTS

Ayers was employed by Vancast as a nursery manager from February 15, 1989 to July 29, 1995.

The Reason Schedule attached to the Determination states:

"The employer deducted the amount of \$657.47 from the complainant's (Ayers') final pay because they believe the complainant was involved in theft of money from them. The employer and employee agree the amount of the deduction was \$657.47"

In a letter dated October 31, 1995 Ayers was informed by Dan Pelletier (Industrial Relations Officer, Employment Standards Branch) that he was "...not entitled to severance pay as (he was) fired for just cause."

Ayers denies that he owes any money to Vancast and, in a letter dated January 31, 1996 to the Tribunal, acknowledges that he is owed \$657.47 in wages. He does not comment on Pelletier's finding that his employment was terminated for just cause.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether the deduction made by Vancast from Ayers' wages was made contrary to the *Act*.

ANALYSIS

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

Deductions

(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) of the *Act* states:

Assignments

(4) 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 an 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.

Based on the facts of this case I conclude that Vancast has contravened Section 21 of the *Act* by deducting \$657.47 from Ayers' wages without his written consent.

ORDER

Pursuant to Section 115 of the *Act*, I order that Determination No. CDET 000224 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

February 9, 1996
Date

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