

An appeal

- by -

Davinder Sangha, operating as Sangha Silviculture
("Sangha")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: April D. Katz

FILE No.: 2002/513

DATE OF DECISION: January 21, 2003

DECISION

OVERVIEW

Four former employees of Davinder Sangha operating as Sangha Silviculture (“Sangha”) complained to the Director of Employment Standards (the “Director”) claiming wages were owed for unpaid hours of work and unauthorized deductions from their pay cheque. The employees were engaged as silviculture workers during the summer of 2001. Three of the employees, Jim Salter (“Salter”), Vern Wagner (“Wagner”) and John Whitty (“Whitty”) had \$100 deducted for camp costs. The Director issued a Determination which found that wages were owed and ordering Sangha to re-pay the employees in wages for the amount deducted for camp costs. Sangha has appealed the Determination in relation to the repayment for camp costs deducted from the employees’ wages.

This appeal proceeded by written submissions.

ISSUE

Was Sangha permitted to deduct \$20 per day for camp costs from employees’ wages?

ARGUMENT

In his appeal Sangha argued that on the first night in camp the employees were given contracts to sign which authorized the deductions.

The employees argued that nothing was mentioned on the first night and no contracts were distributed for signing until the employees went to pick up the wages. The employees deny signing an agreement to authorize any deductions.

The Director’s Delegate argued that section 21 of the *Employment Standards Act* (“Act”) prohibits an employer from deducting unauthorized amounts from an employees wages.

FACTS

Sangha employed Murdoch from May 14, 2001 to June 20, 2001, Salter and Wagner from June 14, 2001 to June 20, 2001 and Whitty from May 29, 2001 to June 20, 2001. From June 14, 2001 to June 20, 2001 the employees worked together and slept and ate at the camp. Sangha charges employees \$20 per day for camp costs. When the employees picked up their last wages Wagner and Whitty each had \$100 deducted for camp costs. Murdoch’s pay stub showed camp cost charges but none were deducted from his pay cheque. From the evidence submitted Slater did not have camp costs deducted.

In the Determination the Delegate ordered Sangha to pay Whitty, Wagner and Slater \$100 deducted for camp costs.

Sangha agreed to pay the wages owing but appealed the Determination with respect to the charges for camp costs.

ANALYSIS

The onus of proving the Director has erred is on the appellant in an appeal to the Tribunal. Sangha has disputed that he owes the employees for camp costs.

The Director's delegate relies on section 21 of the *Act* which provides as follows.

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 Employment Standards Regulations specifically provide for silviculture workers in section 37.9. The regulation was passed in 2000. The relevant provisions of the regulation are as follows.

Silviculture workers

- 37.9(1) Sections 33, 35, 36 (1), 37, 40, 41, and 42 (2) of the Act do not apply to a silviculture worker. . . .
- (7) An employer may charge a silviculture worker a fee for lodging, but may not charge more than
- (a) \$25 per day for camp costs, or
- (b) if the worker is lodged in a motel, the actual cost for that individual to stay at the motel.

There is no dispute that the employees slept and ate at the camp. The *Act* prohibits deductions unless the deductions are permitted or required by the *Act*. The regulation gives the employer discretion to deduct up to \$25 per day for camp costs. Sangha deducted \$20 per day from Whitty's and Wagner's salary.

The Director's delegate found that \$100 was also deducted from Slater's wages but I cannot find any evidence in the documentation to support this deduction. Slater's gross earnings were \$326 and the net was \$310.

I find that the \$100 was only deducted from Whitty's and Wagner's wages.

I find that the Director's delegate erred in concluding that Sangha required written authorization from the employees to deduct camp costs. The regulation allows Sangha to deduct up to \$25 per day without the employees' consent.

Based on these findings I would vary the Determination with respect to the requirement to pay Whitty, Wagner and Salter for camp costs deducted. The balance of the findings in the Determination are not disputed and are confirmed.

CONCLUSION

Based on the findings I conclude that appeal is successful in having the Determination varied to delete the requirement to pay the employees for camp costs deducted.

ORDER

Pursuant to section 115 of the Act, I order that the Determination dated September 18, 2002 is varied to provide for a deduction of \$100 for Wagner and \$100 for Whitty from the amount found to be owing. The interest should be re-calculated in accordance with s. 88 of the *Act*. I order that the Determination dated September 18, 2002 is otherwise confirmed.

April D. Katz
Adjudicator
Employment Standards Tribunal