

An appeal

- by -

Ralph's Marble & Tile Ltd. operating as
My Favorite Store Collectibles and Melmi Enterprise
("Ralph's")

- 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.: 2002/534

DATE OF DECISION: January 21, 2003

DECISION

OVERVIEW

Nicole Habberley (“Habberley”) filed a complaint with the Director of Employment Standards (the “Director”) when her former employer, Ralph’s Marble & Tile Ltd. operating as My Favourite Store Collectibles and Melmi Enterprise (“Ralph’s”) failed to pay her all of her 4% holiday pay and her statutory holiday pay when he sold the business. In the Determination the Director ordered Ralph’s to pay Habberley \$206.38 in Vacation pay, Statutory Holiday pay plus interest. Ralph’s appeals the Determination on the basis that Habberley owes Ralph’s money on a personal loan.

This appeal proceeded by written submissions.

ISSUE

Does Ralph’s have any basis on which to reduce the amount found to be owing for vacation pay and statutory holiday pay?

ARGUMENT

In the appeal Ralph’s argues that Habberley borrowed \$300 from Ralph’s and agreed to pay it back. When Habberley’s employment came to an end Habberley had not repaid the money and therefore no money should be paid by Ralph’s unless this debt is paid.

The Director’s Delegate argues that there was no authority to ‘set off’ a claim from an employer against money owed to an employee unless there is written or statutory authority. Ralph’s has not disputed the findings of money owed for vacation pay or statutory holiday pay and therefore the findings in the Determination are not in dispute.

FACTS

The facts are not disputed in this appeal. Ralph’s employed Habberley from February 19, 2002 to May 31, 2002 as a sales associate at the rate of \$8.00 per hour. Ralph’s sold the business on May 31, 2002. Ralph’s paid Habberley 2% holiday pay. Ralph’s did not pay Habberley on Good Friday, March 29, 2002, or Victoria day May 20, 2002.

ANALYSIS

The onus of proving the Director has erred is on the appellant in an appeal to the Tribunal. Ralph’s does not dispute the Director’s delegate’s findings that Ralph’s owes Habberley 2% holiday pay of \$142.52 and \$128 statutory holiday pay.

Ralph’s argues that Habberley cannot be paid until Ralph’s receives repayment of a loan it made to Habberley. Habberley disputes that any loan was made. The Director argues that the presence or absence of the loan is immaterial to the Determination because even if the loan happened Habberley did not give

written permission to deduct any money from her wages which would be required for any reduction in the amount owing.

Specifically the Director refers to section 21 of the *Employment Standards 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.

If there was sufficient evidence from witnesses that a loan had occurred, Ralph's would not be relieved of the obligation to pay all the money found to be owing in the Determination.

I find that Ralph's has not provided any evidence of an error in the Determination or any authority for any reduction of the amount owing to Habberley.

CONCLUSION

Based on the evidence provided there is no evidence to support the appeal. The Determination is therefore confirmed.

ORDER

Pursuant to section 115 of the Act, I order that the Determination in this matter, dated October 3, 2002 is confirmed.

April D. Katz
Adjudicator
Employment Standards Tribunal