

**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 -

Pacific Business Equipment Ltd.  
("Pacific")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 98/806

**DATE OF DECISION:** February 2, 1999

## DECISION

### OVERVIEW

This is an appeal by Pacific Business Equipment Ltd. (“Pacific”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination which was issued on November 26, 1998 by a delegate of the Director of *Employment Standards* (the “Director”). The Determination requires Pacific to pay \$205.89 (including interest) to Roy Scott on account of a \$200.00 deduction which was taken from Mr. Scott’s pay cheque. Pacific made the deduction from Mr. Scott’s wages as a result of an insurance claim for damage caused to one of its vehicles.

The Director determined that the \$200.00 deduction from Mr. Scott’s wages contravened Section 21 of the *Act* (Deductions).

Pacific’s appeal is based on the following grounds:

- Mr. Scott was at fault for the damage done to the company vehicle;
- Mr. Scott had personal use of the vehicle when the damage occurred; and
- Mr. Scott agreed, as a condition of driving a company vehicle, that he would be required to pay \$200.00 (the amount of the ICBC deductible) if he were “...at fault for having an accident using a company vehicle at any time.”

There is no dispute about the essential and relevant facts which give rise to this appeal. The appeal proceeded by way of written submissions from the parties.

### ISSUES TO BE DECIDED

Did the Director err in determining that Pacific contravened Section 21 of the *Act* by deducting \$200.00 from Mr. Scott’s wages?

### FACTS

Mr. Scott was employed by Pacific as a service technician. It provided him with a vehicle which he was permitted to use outside business hours. On April 28, 1998 he drove the vehicle home and parked it in his driveway. The Determination contains the following description of what happened:

During the evening of April 28 or early morning of April 29, 1998, the vehicle rolled backwards down the driveway of Mr. Scott’s home and struck a tree damaging the front driver’s side. The Employee feels this was not his fault as the vehicle had been parked with the hand brake on and the transmission in first gear. The Employer disagreed and deducted the cost of

the insurance deductible from his pay cheque. In December, 1997 the Employee had signed an authorization acknowledging that he would be responsible for the cost of the insurance deductible should he have an accident at any time where he was at fault and the Company's insurance was used to cover the damage.

Pacific does not dispute that it made the \$200 deduction from Mr. Scott's wages, but submits that it did not contravene Section 21 of the *Act* by doing so. Mr. Scott signed an agreement on December 12, 1997 which set out the terms and conditions for driving a company vehicle. It contained the following term in respect of accidents:

b) Should an employee be at fault for having an accident using a company vehicle at any time, and our insurance is used, that employee will be charged for the collision deductible (\$200.00).

Mr. Scott incurred an income tax liability for his personal use of the company vehicle as that was considered to be a "taxable benefit".

The Director determined that Pacific had contravened Section 21 of the *Act* for the following reasons:

The authorization... holds an Employee responsible for an accident at any time he is at fault. This allows the Employer to deduct the cost of the insurance deductible whether an accident occurs when the Employee is on Company Business or using the vehicle for personal use. I believe an accident while driving on Company business would be considered a cost of doing business. If the Employee has provided written authorization for a deduction of the insurance deductible for an accident in these circumstances, the money could be deducted from the Employees pay cheque. Because part 'b' of the Accident section... does not differentiate between personal and business use of a Company vehicle, I believe it is void. Further, section (b)... does not grant the Employer authorization to deduct money from the Employee's paycheque. It only says they will be charged for the collision deductible. Without specific written authorization, a deduction such as this is a contravention of Section 21 of the *Act*.

## **ANALYSIS**

Section 21 of the *Act* states:

- (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.

Section 22 of the *Act* permits an employee to assign his or her wages under certain circumstances. In particular, Section 22(4) provides that "...an employer may honour an employee's written assignment of wages to meet a credit obligation."

Pacific submits that it did not contravene Section 21 of the *Act* for several reasons:

- Mr. Scott had use of the company vehicle for his own personal use at the time of the accident;
- use of the vehicle outside business hours is considered to be a taxable benefit under the *Income Tax Act*;
- the document signed by Mr. Scott on December 12, 1997 permits the deduction which was made from his wages; and,
- the "Interpretation Guidelines Manual" which is published by the Ministry of Labour contains the following commentary about Section 22(4) of the *Act*:

If an employee has an accident while the company car is being used for personal reasons, the employer may request payment. Should the employee provide written authorization, the employer may recover this liability through payroll deduction.

Mr. Scott's submission dated January 11, 1999 and Pacific's reply submission of January 26, 1999 rely on statements by employees of Sidney Tire Ltd. concerning the mechanical state of the parking brake on the vehicle which was damaged. In my view, the mechanical condition of the vehicle's brakes is not relevant to the disposition of this appeal. Similarly, Mr. Scott's liabilities under the *Income Tax Act* are not determinative of his entitlements under the *Employment Standards Act*.

I agree with the Determination that Pacific contravened Section 21 of the *Act*. Of particular relevance to me is the fact that the "authorization" on which Pacific relies does not constitute a specific written assignment of wages as contemplated by Section 22(4). Therefore, Section 21(1) was contravened by Pacific.

My approach to interpreting Section 22(4) is consistent with earlier decisions of the Tribunal, such as: *A.E. Bedford Trucking Ltd.* (BCEST #D265/96) and *Omineca Redi-Mix Ltd.* (BCEST #D176/97) in which it was decided that the assignments contemplated by Section 22 pertain to payment of wages to third parties rather than the recovery of money allegedly owed to an employer. Thus, when an employee does not execute a clearly-worded written assignment to authorize a deduction from wages, that deduction would contravene the *Act*. Similarly, in *Vancast Investments Ltd.* (BCEST #D010/96), I decided that while an employee may authorize an assignment of wages to meet a personal credit obligation, any assignment must be made in accordance with the employee's written instructions and cannot be coerced by the employer. Even where an employee acknowledges a moral obligation to repay a debt to his or her employer, such an acknowledgment is not sufficient for an employer to rely on Section 22(4) of the *Act*: *Craftsman Collision Ltd.* (BCEST #D377/96).

The Director did not err in determining that Pacific contravened Section 21 of the *Act*.

**ORDER**

I order, for all of the reasons given above and by authority of Section 115 of the *Act*, that the Determination be confirmed.

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**

GC/lb