

An appeal

- by -

Melanie Dawn Kraft carrying on business as Aspen Traffic Control  
(“Aspen”)

- 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 (as amended)

**TRIBUNAL MEMBER:** R. Hoops Harrison

**FILE No.:** 2017A/9

**DATE OF DECISION:** April 10, 2017

## DECISION

### SUBMISSIONS

Melanie Dawn Kraft on her own behalf carrying on business as Aspen Traffic Control

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Melanie Dawn Kraft carrying on business Aspen Traffic Control (“Aspen”) has filed an appeal of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on December 14, 2016 (the “Determination”).
2. In that Determination, the Director held that:
  - a. the Claimant, Mr. Wayne Gunanoot, was an employee of Aspen, a traffic control business, up until June 24, 2016,
  - b. Aspen made unauthorized deductions from Mr. Gunanoot’s wages in February and June of 2016 (the “Deductions”) totalling \$515.90, inclusive of interest, and
  - c. Aspen was consequently subject to administrative penalties under the *Act* in the amount of \$500.00.
3. In its appeal, Aspen claims that the Director erred in law in failing to consider all of the available evidence that Mr. Gunanoot in fact consented, ‘albeit orally’, to the Deductions.

### ISSUE

4. The issue to be decided under this appeal is: Were the Deductions from Mr. Gunanoot’s wages made contrary to the *Act*?
5. Under section 114 of the *Act*, the Tribunal has discretion to dismiss all or part of an appeal, without a hearing of any kind, for any of the reasons listed in subsection 114(1), which states:

*At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of the appeal if the tribunal determines that any of the following apply:*

- (a) *the appeal is not within the jurisdiction of the tribunal;*
- (b) *the appeal was not filed within the applicable time limit;*
- (c) *the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;*
- (d) *the appeal was made in bad faith or filed for an improper purpose or motive;*
- (e) *the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;*
- (f) *there is no reasonable prospect that the appeal will succeed;*
- (g) *the substance of the appeal has been appropriately dealt with in another proceeding;*
- (h) *one or more of the requirements of section 112(2) have not been met.*

6. If I decide all or part of the appeal should not be dismissed under section 114(1) of the *Act*, the appeal will proceed and the other parties may be invited to file reply submissions.

## FACTS

7. In determining the *last day of work* for Mr. Gunanoot, the Director, in the Reasons for Determination, cited inconsistencies with Mr. Gunanoot's evidence including contradicting testimony. As a result, the Director gave little weight to Mr. Gunanoot's evidence and instead accepted Ms. Kraft's evidence, on behalf of Aspen, as the best available.
8. Similarly, in determining the *Deductions* from Mr. Gunanoot's wages, the Director also relied on Ms. Kraft's evidence, including information from employment records, that a \$256.67 'debt' was deducted from Mr. Gunanoot's wages in February of 2016 and 'overpayments' of \$246.89 and \$5.78 were deducted from wages earned in June.
9. In considering whether or not the Deductions were contrary to the *Act*, the Director summarized and relied upon sections 21 and 22 of the *Act*.

## ANALYSIS

10. Section 21 of the *Act* reads, in part, as follows:
  - 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 the employee wages for any purpose.
11. Section 22 of the *Act* reads, in part, that "an employer must honour an employee's written assignment of wages...". [Emphasis added]
12. Principally, the Tribunal has consistently held that, absent a written assignment under section 22, wages accrued to an employee may not be used, directly or indirectly, to set off other liabilities as that would be inconsistent with the prohibition found in section 21(1) of the *Act* [see *Sirois*, BC EST # D489/02; *Anodyne*, BC EST # D389/98; *Thornhill*, BC EST # D007/96].
13. Moreover, in an oft-cited decision of the British Columbia Court of Appeal in *Health Employers Assn. of B.C. v. B.C. Nurses' Union*, 2005 BCCA 343 (CanLII), 45 B.C.L.R. (4th) 235, the Court held:

[65] These submissions on "wages" are misplaced. Whatever the reasons a past overpayment may have been made to an employee, and no matter whether that overpayment was "wages," s. 21 says that "an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose" [my emphasis]. "For any purpose" includes the purpose of reimbursing the employer for the overpayment, regardless of the reason for the overpayment. In *Prins, supra* (at para. 1), McEachern C.J.S.C. (as he then was) characterized the provision as an absolute requirement with certain permissible exceptions. He said unilateral deduction of an overpayment of wages was not a permissible exception. It was "aggressive self-help."
14. In this case there is no dispute on the evidence:
  - a. that Aspen had made the Deductions, and

- b. that Mr. Gunanoot did not give a written assignment or written permission to Aspen to make the Deductions.
15. As such, the wage deductions were indeed contrary to section 21(1) of the *Act*.
16. I should also address a collateral point raised by Aspen in its appeal in that it claimed that the Director failed to admit or indeed entertain some evidence respecting the February portion of the Deductions which would speak to Mr. Gunanoot's giving verbal permission to the 'advances'.
17. Again, in *Thornbill, supra*, it was clearly stated that because only written assignments are included exceptions to section 21(1) of the *Act*, no matter what verbal agreement may have existed between the parties, it was not relevant to whether or not the deductions were contrary to the *Act*.
18. In view of *Thornbill, supra*, I do not find that the Director erred in his appreciation of the relevant and material evidence in making his Determination.

## CONCLUSION

19. For the reasons stated above, the wage deductions by Aspen were made contrary to the *Act*. As the Determination was based on uncontroverted evidence before the Director, there is no possibility that the appeal can succeed. The purposes and objects of the *Act* would not be served by requiring the other parties to participate and respond.
20. Accordingly, I would dismiss the appeal pursuant to section 114 of the *Act*.

## ORDER

21. Pursuant to section 115 of the *Act*, I order the Determination be confirmed together with any interest that has accrued under section 88 of the Act.

---

**R. Hoops Harrison**  
**Member**  
**Employment Standards Tribunal**