

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act S.B.C. 1995, C.38*

- by -

JCL Hair Design Inc.  
operating Netwerxx  
("Netwerxx")

and

**THE DIRECTOR OF EMPLOYMENT STANDARDS**

(The "Director")

**ADJUDICATOR:** Ralph Sollis

**FILE NO:** 96/044

**DATE OF DECISION:** April 2, 1996

## DECISION

### OVERVIEW

This is an appeal by JCL Hair Design Inc. operating Netwerxx pursuant to Section 112 of the *Employment Standards Act* ("the *Act*") against Determination #CDET 000244 of the Director, issued on November 30, 1995. The Determination was issued following a complaint by Tania Bell ("Bell"), a former employee of Netwerxx.

Consideration of this appeal falls under the transitional provisions of the *Act*. Section 128(3) of the *Act* states:

If, before the repeal of the former *Act*, no decision was made by the director, an authorized representative of the director, or an officer on a complaint made under that *Act*, the complaint is to be treated for all purposes, including Section 80 of this *Act*, as a complaint made under this *Act*.

### FACTS

Bell was employed by; Netwerxx as a receptionist from September 23, 1994 to June 20, 1995. Her rate of pay was \$7.00 per hour. Bell submitted a complaint on September 10, 1995 concerning the non-payment of overtime pay. A delegate of the Director issued a Determination dated November 30, 1995 in the amount of \$273.58.

### ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Netwerxx may withhold wages (overtime pay) from Bell in payment of a penalty to Revenue Canada.

### ANALYSIS

On January 10, 1995 Bell signed a "Cash Payout Agreement" with Netwerxx wherein Bell agreed, in part, to be responsible for cash shortages and penalties when revenue bills were not paid by the appropriate due date. On July 6, 1995 Revenue Canada imposed a penalty of \$275.25 on Netwerxx due to a late remittance. It is this penalty amount which has been deducted from Bell's overtime entitlement.

Part 3 of the *Act*, and similar provisions in previous legislation, establishes an orderly manner by which employees are to be paid their wages.

Under this Part employees have a responsible expectation that wages will be paid on a regular and timely basis.

The relevant part of the *Act* concerning withholding of wages is as follows:

**Deductions**

21. (i) 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.

There have been no regulations made under this *Act* concerning section 21 (2) of the *Act*. The "Cash Payout Agreement" entered into between Bell and Netwerxx on January 10, 1995 does not, in my opinion, constitute an assignment of wages as provided by Section 22 of the *Act*. Even if this document were a written assignment, it would require the approval of the Director.

**Assignments**

22. .

(2) The director may authorize an assignment of wages for a purpose that the director considers is for the employee's benefit.

For these reasons I find that Netwerxx owes wage to Bell in the amount calculated by the Director.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that Determination #CDET 000244 be confirmed.

“Ralph Sollis”  
**Ralph Sollis**  
**Adjudicator**  
**Employment Standards Tribunal**

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