

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 -

Dakota Development Company Ltd.
("Dakota")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 96/671

DATE OF DECISION: **January 22, 1997**

DECISION

OVERVIEW

This is an appeal by Dakota Development Company Ltd (“Dakota”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against Determination No. CDET 004400 issued by a delegate of the Director of Employment Standards on October 22, 1996. In this appeal Dakota claims it does not owe vacation pay to its former employee, Ali Ghotaymi (“Ghotaymi”).

FACTS

On October 22, 1996, Determination No. CDET 004400 was issued by a delegate of the Director of Employment Standards against Dakota in the amount of \$824.11 for vacation pay and accrued interest owed to Ghotaymi.

In the Reason Schedule attached to the Determination, the delegate stated :

(Ghotaymi)...worked for Dakota as Manager from June 2, 1994 to April 30, 1996. His rate of pay was \$1,800.00 per month and commission at a rate of 1 per cent of sales. He claimed that he is owed vacation pay for the pay periods from June 1994 to end of April 1995.

...

On May 14, 1996...Gabi Kiser (the accountant for Dakota) told (Ghotaymi) that the owner refused to pay him the vacation pay.

...

Dakota has failed to provide information as to whether (Ghotaymi) is owed vacation pay.

...

As Dakota has not provided documents relating to (Ghotaymi's) gross earning...I have relied on the information submitted by (Ghotaymi) in calculating the amount of vacation pay owing.

On November 13, 1996, Dakota appealed the Determination. In its reasons for the appeal, Dakota stated:

Dakota Development Co. Ltd. is making this appeal on the grounds that we do not feel Mr. Ghotaymi has any claim on vacation monies showing as payable to him due to the fact that on or about 2 days before he left our employment approximately 15 pairs of speakers in our store were damaged with a sharp object, while Mr. Ghotaymi was on shift. We ask the Tribunal to turn down Mr. Ghotaymi's claim as damage was higher in cost than his vacation pay due.

Although provided with the opportunity, Dakota made no further submissions on this appeal.

ANALYSIS

The burden is on Dakota to show that the Determination is wrong. In my view, Dakota has not established that the Determination is wrong.

Dakota does not dispute that it owes vacation pay to Ghotaymi. Rather, it states that the vacation pay should not be paid on account of the damage allegedly caused by Ghotaymi.

Section 21(1) of the *Act* prohibits an employer from withholding wages from an employee for any reason, except where there is explicit statutory authority to do so. Section 21(2) of the *Act* prohibits an employer from requiring an employee to pay any of the employer's business costs by withholding the employee's wages, except as permitted by regulation. None of the exceptions are relevant to this case. Accordingly, Dakota is not entitled to withhold wages (vacation pay) from Ghotaymi. In my view, if Dakota wishes to pursue Ghotaymi for damages that may have been sustained to their speakers, it must do so by way of a separate civil action.

ORDER

I order pursuant to Section 115 of the *Act* that Determination No. CDET 004400 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal