

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 -

New Pacific Limousine Service Inc.
("New Pacific")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman
FILE NO.: 95/011
DATE OF HEARING: April 11, 1996
DATE OF DECISION: May 3, 2001

DECISION

APPEARANCES

New Pacific Limousine Service Inc.:	Siedo Tzogoëff Tony Beasley Gerald Hooper
Director’s Delegate:	Sarah James
The Other Party:	Peter Cordoni

OVERVIEW

This is an appeal by New Pacific Limousine Service Inc. (“New Pacific”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against Determination Number CDET 000073 issued by the Director of Employment Standards (the “Director”) on November 14, 1995. The Reason Schedule attached to the Determination indicates that New Pacific owes Peter Cordoni (“Cordoni”) overtime wages, compensation/termination pay, vacation pay and wages which were deducted without the consent of the employee. In its appeal, New Pacific states “...we will pay vacation pay due, and illegal deductions, but no wages/overtime is owed, nor is termination pay owed to Mr. Cordoni.”

FACTS

At the commencement of the hearing an Agreed Statement of Facts between New Pacific and Cordoni was entered which reads as follows:

The employer (New Pacific Limousine Service Inc./Tony Beasley) agrees that the following is not disputed and will be paid to the complainant (Cordoni):

<i>4% accrued vacation pay</i>	<i>\$314.54</i>
<i>Illegal deductions</i>	<i>\$160.00</i>
<i>Overtime</i>	<i>\$502. 50</i>
<i>Minimum daily pay</i>	<i>\$490.00</i>
<i>4% vacation pay on o/t min. daily pay</i>	<i><u>\$ 39.70</u></i>
 <i>Total Gross</i>	 <i>\$1,506.85</i>

Adjudication will be required on the issue of compensation pay. The employer and complainant agree that if compensation pay is found to be owing, the amount owed is \$692.82.

Subsequently, however, the parties also agreed that New Pacific owed Cordoni compensation pay in the amount of \$692.82.

Although New Pacific agrees it owes Cordoni a total of \$2,199.67 in gross wages, it seeks an order from the Tribunal that this amount be held in trust pending the outcome of a small claims court action it has commenced against Cordoni.

The small claims court action concerns the issue of “stolen cellular phone time”. Siedo Tzogoëff (“Tzogoëff”), representative for New Pacific, contends that Cordoni owes New Pacific in excess of \$1,200.00 for mis-use of cellular phone time. As well, New Pacific seeks reparation in the amount of \$300.00 for costs associated with obtaining the phone records from BC Tel Mobility.

Tzogoëff advised that Cordoni was served a summons regarding the small claims court action just prior to the commencement of the hearing.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether the Tribunal has the jurisdiction to order that wages, which are owed to Cordoni by New Pacific, be held in trust pending the outcome of a court proceeding which has been initiated by New Pacific against Cordoni.

ARGUMENTS

Tzogoëff argues that the amount New Pacific owes to Cordoni should be held in trust pending the outcome of the small claims court action. New Pacific has no confidence that when it is successful in the court action, Cordoni will voluntarily re-pay the monies he owes New Pacific. The monies held in trust can therefore be used to satisfy the claim of New Pacific against Cordoni. Tzogoëff states that if the Tribunal decides not to hold the monies in trust and issues an order against New Pacific, then New Pacific will comply with that order.

Sarah James, the Director’s Delegate argues that the Tribunal has no authority to hold the wages in trust. In the alternative, if the Tribunal does have the authority, she argues that the Tribunal should not exercise it in this case as New Pacific had ample time prior to the hearing to commence the small claims action. She also argues that Cordoni has not been provided with the phone records and believes that New Pacific’s claim is inflated. In addition, she argues that there is nothing to prevent New Pacific from seeking adjournments to the court action which would result in Cordoni suffering further delays in receiving the wages that he is owed by New Pacific.

ANALYSIS

Section 21 of the *Act* prohibits an employer from withholding wages from an employee for any reason. No deductions of any kind can be made without the employee's written authorization, except for Income Tax, CPP, UIC or a court order to garnishee an employee's wages. In this case, none of these exceptions are applicable. Section 21 also reinforces the position that employees are not responsible to pay any of the employer's business costs.

Section 2 of the *Act* states that one of the purposes of the *Act* is to provide for efficient procedures for resolving disputes between employers and employees. An order from the Tribunal that earned wages be withheld from an employee for an indefinite period pending the outcome of another proceeding (which may or may not result in an order or judgment) would defeat this purpose of the *Act*.

Under Section 113 of the *Act*, the Tribunal has the discretion to suspend the effect of a Determination for a period of time and subject to any conditions it thinks appropriate. A suspension is permitted when the full amount required to be paid under the Determination is deposited in trust with the Director. In certain circumstances, a smaller amount may be deposited with the Director.

In view of the clear and unequivocal prohibitions outlined in Section 21 of the *Act*, I am not satisfied that Section 113 provides for the kind of relief sought by New Pacific. If it did, then Section 113 of the *Act* would allow the Tribunal to do what an employer is prohibited from doing under Section 21 of the *Act*. I do not believe that this is the intent of the Section 113 of the *Act*.

In the absence of any clear and express language in the *Act* or the *Employment Standards Regulation* giving the Tribunal the power to withhold earned wages pending some other proceeding, I conclude that I should not order that wages which are owed to Cordoni be held in trust pending the outcome of the court action initiated by New Pacific.

An employer may commence a small claims court action against an employee. However, this action is entirely separate and apart from the *Act*. An employees entitlements under the *Act* cannot be deferred or eliminated by the Tribunal because of some other proceeding.

ORDER

Pursuant to Section 115 of the *Act*, I order that Determination No. CDET #000073 be varied to \$2,199.67.

Norma Edelman
Registrar
Employment Standards Tribunal

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