

**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 -

C.N. Danroth Contracting Ltd.  
("Danroth")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 97/007

**DATE OF DECISION:** February 5, 1997

## DECISION

### OVERVIEW

This is an appeal by C.N. Danroth Contracting Ltd. (“Danroth”), under Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination which was issued on December 12, 1996 by a delegate of the Director of Employment Standards. The Determination requires Danroth to pay \$873.12 plus accrued interest as a result of making a deduction from the wages owed to Earl L. Hovey (“Hovey”). The deduction from Hovey’s wages was made to recover the cost of transporting Hovey by helicopter from a remote logging camp (Woods Lagoon) to Port McNeil or Port Hardy. Danroth’s appeal seeks to have the Determination cancelled.

### ISSUE TO BE DECIDED

The issue to be decided is whether the deduction which Danroth made from Hovey’s wages contravened the *Act*.

### FACTS

The Determination set out the following reasons as the basis for concluding that Hovey had not authorized the deduction from his wages:

On March 8, 1996 the First Aid Attendant, Deanna Avon, noted that Hovey’s face was swollen and asked him what was wrong. Hovey told her that he had a pre existing medical condition that occasionally gave him trouble, and explained that bone chips caused some pain and swelling. Avon encouraged him to leave camp and seek medical treatment but he said that he wished to stay and work. Approximately six hours later, Hovey again saw Avon. According to Avon, his condition had deteriorated, his vision was blurred, his speech impaired and his equilibrium was off. She telephoned a doctor in the Port Hardy hospital who advised her to get the employee out of camp as soon as possible. Avon then called for a helicopter to pick the employee up.

At this point, Iver Vincent, a supervisor, arrived in camp. When he learned that Hovey was in pain and that a helicopter was coming, he asked if the situation required immediate attention. Vincent stated that there was a scheduled flight to arrive in Woods Lagoon and that the helicopter should be cancelled unless the employee’s condition required medical attention. Vincent told Hovey that if he took the helicopter, it would be at his own

expense. The helicopter then arrived and the employee left on board the helicopter.

It was Vincent's opinion that the helicopter was not needed and that Hovey could have taken a regularly scheduled flight.

Avon consulted with a doctor and made a decision to evacuate the employee by helicopter. Avon assisted in that his decision by her belief that regular flights may not have been reliable due to bad weather conditions.

Hovey did not sign any authorization for the employer to deduct the cost of the helicopter from his wages.

In its appeal, Danroth gives the following reasons why it believes the Determination should be cancelled:

- Hovey had decided that he wanted to leave camp and was willing to wait for a scheduled flight.
- Hovey's medical condition had been present for three days and he did not take the opportunity to have it looked at by a doctor.
- Hovey refused to take the earlier recommendation of the first aid attendant to have it checked by a doctor.
- When asked by a Supervisor if it was a medical emergency, Hovey stated that it was not.
- Hovey was told by the supervisor that unless it was a medical emergency the cost of the helicopter would be his responsibility.
- Hovey was aware that the cost would be his before the helicopter arrived at Woods Lagoon.
- Although Hovey did not sign anything to have the helicopter cost deducted from his wages, he was told by the supervisor that it would be his cost.
- The First Aid Attendant did not act alone in deciding to order a helicopter, Hovey helped her to make that decision.

## ANALYSIS

Section 21 of the *Act* states:

### Deductions

- (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 21 (1) contains a clear statement prohibiting employers from making deductions (other than those required by statute) from an employee's wages.

Even if I were to find that Hovey was told that "... the cost of the helicopter would be his responsibility" and Hovey was "... aware that the cost would be his before the helicopter arrived at Woods Lagoon", the deduction made by Danroth would contravene Section 21 of the *Act*.

Danroth's appeal does not seek to rely on Section 22 of the *Act* as a ground for varying or cancelling the Determination. However, it is important to note that Section 22(4) of the *Act* states:

- (4) *An employer may honour an employee's **written assignment** of wages to meet a credit obligation.(emphasis added)*

Thus, even if I am wrong in my interpretation of Section 21(1) of the *Act* and the conversation between Hovey and Vincent created a credit obligation of some kind, the deduction made by Danroth would contravene Section 22(4) of the *Act* because Hovey did not give a written assignment of wages to Danroth.

For all these reasons I conclude that the Determination should not be varied or cancelled.

**ORDER**

I order, pursuant to Section 115 of the *Act* that the Determination dated December 12, 1996 be confirmed.

---

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