

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C. 113

- by -

Steve Gaspar operating as
Gone Hollywood Video

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 97/805

DATE OF DECISION: February 11, 1998

DECISION

OVERVIEW

This is an appeal by Steve Gaspar (“Gaspar”) under Section 112 of the *Employment Standards Act* (the “Act”) against a Determination which was issued on October 16, 1997 by a delegate of the Director of Employment Standards.

The Director’s delegate determined that Steve Gaspar operating as Gone Hollywood Video owed wages in the amount of \$265.29 (including interest) to a former employee, Robert Farquhar (“Farquhar”).

In his appeal dated November 7, 1997, Gaspar advised that the correct name of the employer in this case is Family Time Recreation & Entertainment Ltd. (“Family Time”). In submissions dated November 27, 1997 and January 23, 1998, the Director’s delegate agreed that the style of cause should be Family Time. He said that the business license for Gone Hollywood Video was taken out in the name of Family Time and he enclosed a corporate search which showed Gaspar as a Director and Officer of Family Time. Gaspar and Farquhar were forwarded this information on January 26, 1998 for their reply. No reply was received by the Tribunal. Accordingly, after considering this matter, I amend the style of cause on the Determination to show Family Time as the employer of Farquhar.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Family Time owes wages to Farquhar.

FACTS

Family Time operates a video rental store in Abbotsford and employed Farquhar as a video store attendant at \$7.00 per hour from March, 1997 to June 19, 1997 when Farquhar quit his job.

The Reason Schedule attached to the Determination shows that the Director’s delegate concluded that Family Time withheld wages from Farquhar contrary to Section 21(1) of the *Act*. The amount withheld was \$261.24 in final wages and vacation pay.

In its appeal, Family Time confirmed it withheld the above wages from Farquhar. Family Time states that the amount withheld was to cover approximately \$200.00 worth of damage done by Farquhar to the company premises. Further, when Farquhar was hired he agreed that certain rentals would be charged to his personal rental account and could be deducted from his wages. After he quit, the company charged Farquhar’s account \$102.00 to cover the rental charges he had incurred during his employment. Family Time has further charges against Farquhar for the time he had items in his possession after he quit. Finally,

Family Time was advised by a customer that Farquhar let his friends take out movies without recording the transaction and the cost of this alleged theft is still unknown.

Farquhar did not reply to the appeal. In the Reason Schedule attached to the Determination the Director's delegate said that Farquhar denied damaging any of Family Time's property and he denied keeping the proceeds of the rentals of video tapes. He also said he was allowed to take video tapes home for his own private viewing and this accounts for the tapes not showing in inventory from time to time.

ANALYSIS

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. Thus, Family Time cannot withhold wages from Farquhar for the reasons it gives in this appeal.

Section 22(4) of the *Act* states that an employer may honour an employee's written assignment of wages to meet a credit obligation. However, there is no evidence which would indicate Farquhar gave written authorization to Family Time to deduct wages to meet an alleged credit obligation.

For the above reasons, I find no grounds to vary or cancel this Determination except with respect to the style of cause.

ORDER

Pursuant to Section 115 of the *Act* I order that the style of cause on the Determination be changed to show Family Time Recreation & Entertainment Ltd. as the party owing wages to Robert Farquhar. I further order that the Determination as amended be confirmed

Norma Edelman
Registrar
Employment Standards Tribunal

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