

An appeal

- by -

550635 B.C. Ltd. operating as Jack's Towing (1997)
("Jack's" or "employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: Paul E. Love

FILE No.: 2000/827

DATE OF DECISION: March 2, 2001

DECISION

OVERVIEW

This is an appeal by the employer of a Determination dated November 8, 2000. In the Determination the Delegate found that an employer deducted, without proper authorization approved by the Director, amounts from wages for insurance deductibles and damages arising from accidents, cash shortage and for uniforms. The Delegate determined correctly that these were business costs of the employer, and while the employer had a written authorization for some of the deductions these were not proper authorizations within the meaning of s. 21 and 22 of the *Employment Standards Act* (the “Act”). The Delegate erred in ordering the employer to pay the costs of tires which the parties had agreed would be purchased by the employee, using the employer’s credit, for the employee’s vehicle. This amount did not form part of the employee’s complaint, and the Delegate did not investigate or interview the employee to determine whether this amount formed part of the employee’s claim. I varied the amount of the Determination, to confirm the employee’s entitlement to wages for impermissible deductions for insurance deductibles, damages, cash shortage uniform costs, but not the cost of tires purchased for the benefit of the employee.

ISSUES TO BE DECIDED

Did the Delegate err in determining that the employer was entitled to deduct from the employee’s wages amounts for short cash, insurance deductible and motor vehicle collision damages, uniforms, and cost of tires for the employee’s vehicle?

FACTS

Leo Pendleton Junior worked as a tow truck operator between February 28, 1998 to July 8, 1998 for 550635 B.C. Ltd. Operating as Jack’s Towing (1997) (“Jack’s or employer”). During the course of the employment relationship Jack’s made deductions from Pendleton’s pay cheques, some of which were authorized by a written assignment signed by the employee. The total deduction made as a result of authorizations was \$1,752.40, as follows:

- May 10, 1999 for \$684.90 re: Kal-Tire invoice;
- April 25, 1999 for \$17.50 short cash on January 22, 1999;
- September 29, 1988 for \$300.00 for ICBC deductible;
- December 15, 1998 for \$750.00 re MVA backing into vehicle

Certain of the deductions were made without assignment, including deductions for the cost of a jacket and company shirts \$26.00.

The employee indicated to the Delegate that he was required to pay for the vehicle damage or he would likely have been terminated. The employee says that he had been asked to wear the company clothing and was provided with the clothing. The clothing bore company logos and was worn by the employee at work. Surprisingly absent from the employee's claim form and his own calculations of his claim, and the determination, is any discussion of the truck tires. The Delegate included the sum of \$684.90 in the Determination on account of truck tires.

The employer claims to have been told by the Delegate's predecessor that the employer could deduct monies from the employee's pay cheque as long as the individual authorized it in writing and signed the document. The employer claims that most deductions made were authorized by the employee. The employer claims that it is common practice in the towing industry to expect the drivers to pay for accidents that are a result of driver negligence. The employer claimed that it had an agreement with the employee whereby the employer paid for truck tires, for the employee's truck, on behalf of the employee, and the employee repaid the employer for the cost of the tires from the employee's wages.

The delegate found that deduction authorizations obtained with regard to accidents, was a "passing off" of the employer's business costs to the employee. The Delegate found the employer made illegal deductions in the amount of \$1,778.40, and with interest of \$160.15, for a total of \$1,938.55. Another Delegate issued a zero penalty determination for a breach of s. 22 of the *Act*.

ANALYSIS

The burden is on the appellant, in this case the employer, to demonstrate that there is an error in the Determination such that I should vary or cancel the Determination. This appeal concerns s. 21 and 22 of the *Act*:

- 21(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.

- 22(1) An employer must honour an employee's written assignment of wages
- (a) to a trade union in accordance with the *Labour Relations Code*;
 - (b) to a charitable or other organization, or a pension or superannuation or other plan, if the amounts assigned are deductible for income tax purposes under the *Income Tax Act (Canada)*;
 - (c) to a person to whom the employee is required under a maintenance order, as defined in the Family Maintenance Enforcement Act, to pay maintenance;
 - (d) to an insurance company for insurance or medical or dental coverage, and
 - (e) for a purpose authorized under subsection (2)
- (2) The director may authorize an assignment of wages authorized by a collective agreement.
- (3) An employer must honour an assignment of wages authorized by a collective agreement
- (4) An employer may honour an employee's written assignment of wages to meet a credit obligation.
- 23 An employer who deducts an amount from an employee's wages under an assignment of wages must pay the amount
- (a) according to the terms of that assignment, or
 - (b) within one month after the date of the deduction whichever is sooner

It may be that the employer has a claim against the employee for employee negligence in the operation of company property, or claims against the employee for unauthorized use of company property. These claims, however, are not within my jurisdiction as an adjudicator pursuant to the *Act*, and I make no finding concerning the merits of such a claim. It is not open to me to "set off" the employer's claims against the employee's entitlements under the *Act*. Although the employer may perceive that the employee is indebted to him, the *Act* clearly specifies in s. 21(1) that an employer may not withhold or require payment of all or part of an employee's wages without a written assignment by the employee to the employer. The types of assignments that an employer must honour are set out in s. 22 of the *Act*.

The employee earns wages by working. Work creates an obligation on the part of the employer to pay the employee for work. From time to time, an employer may have monetary claims against the employee. An employer is not permitted to exercise a "self help remedy" by withholding pay or making payroll deductions to satisfy an employer's claim against an employee. An employer who has a monetary claim against an employee must establish that claim in court if that claim is disputed. It is open to the employer to reach an agreement for repayment with the employee, which requires the employee to repay the employer, but an employer is not able to help itself to wages, or enforce its claims through payroll deduction, even

with a written assignment. The exception to this is that the Director may approve assignments for the benefit of the employee.

I note in particular, that if it is a custom in the towing industry to deduct insurance deductibles or property damage claims from employee pay cheques, this custom is a clear violation of the *Act*. I note also that if a former Delegate advised the employer that it could deduct anything from the employee's pay cheque as long as there was a written authorization, this might be characterized as an "officially induced error of law". This, however, is not a defence. The *Act* is clear with regard to deductions from pay. It appears that if an employer wishes to proceed and deduct amounts, without advance approval in writing of the Director, it does so at its peril.

Sections 21 and 22 of the *Act*, have been given an interpretation by the Tribunal which is consistent with the protection of employees. There are numerous and ingenious ways of attempting to pass business costs onto an employee. A relatively innocuous request by an employer may be perceived by an employee as coercive. In this case, Mr. Pendleton's written submission indicates that he felt that he would lose his job if he did not accede to the employer's request.

The Delegate did not err in that portion of the Determination which dealt with the employee's claims with regard to insurance deductibles, damages, cash shortage and clothing.

Tires

I note that there is no discussion in the Determination concerning the Kal-Tire invoice. The complainant's position with regard to the Kal-Tire invoice is not set out in the Determination. The complainant did not identify the Kal-Tire invoice in his complaint to the Employment Standards Branch as an item which should not have been deducted from his pay by the employer. The employee made no written submissions on this appeal.

The employer produced an assignment for the amount of tires purchased for the employee's vehicle. The employer did not provide proof to the Delegate that the Kal-Tire invoice was a personal purchase, the employer did provide proof to the Delegate that the amount was deducted. The Delegate says that she has been "unable to confirm the validity of the statement with the complainant with regard to tires". I am not able to conclude from this that the Delegate spoke to and ascertained the evidence of the complainant, prior to issuing the Determination.

At my request the Tribunal set this matter for an oral hearing on the issue of whether the Delegate erred in determining that the amounts deducted from wages for the tires, should not have been deducted by the employer. This hearing did not proceed, as a result of further information obtained by the Tribunal's settlement officer, Mr. Hameluck. Mr. Hameluck contacted the employee, and verified the employee's position that the employee had an agreement with the employer to deduct from wages the cost of tires purchased for the employee's personal vehicle. In my view, there is therefore an error in the Determination to the

extent that the Delegate added in the sum of \$684.90, which was not claimed by the employee, and to which the employee was not entitled. In this case the absence of a complaint from the employee about a deduction for “tires”, together with the assignment given by the employee, should have alerted the Delegate to investigate this point more thoroughly.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated March 22, 2000 be varied to provide that the employee is entitled to payment of the sum of \$1,093.50, together with interest calculated in accordance with s. 88 of the *Act*.

PAUL E. LOVE

**Paul E. Love
Adjudicator
Employment Standards Tribunal**