

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 -

Double A Management Corporation
operating Iceland Academy
("Iceland Academy")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO: 96/274

DATE OF DECISION: May 31, 1996

DECISION

OVERVIEW

This is an appeal by Double A Management Corporation operating Iceland Academy (“Iceland Academy”), under section 112 of the *Employment Standards Act* (the *Act*), against Determination #CDET 001798. The Determination was issued by the Director of Employment Standards on March 29, 1996. The Director’s delegate determined that Iceland Academy owes wages to Sharon Schacter (“Schacter”). Iceland Academy is a private school.

Iceland Academy’s appeal is based on an agreement between it and Schacter that her net earnings would be applied to pay for her two son’s tuition fees.

ISSUE TO BE DECIDED

Is Iceland Academy permitted by the *Act* to apply Schacter’s net wages to cover the cost of her son’s tuition fees?

FACTS

The Director’s delegate determined that Schacter was employed by Iceland Academy as a secretary from June 5 to June 30, 1995 and from August 23, 1995 to November 29, 1995.

Schacter’s salary was \$8.00 per hour prior to August 31, 1995 and \$11.00 per hour effective September 1, 1995.

The Determination shows \$6,538.98 as the total amount payable (\$6,373.79 wages plus interest to the date of the Determination). Detailed calculations of the wages owing were attached to the Determination.

There is no substantive dispute about Schacter’s hours of work and her hourly wage rate. The Director’s delegate based her calculation of wages owing on information provided by Schacter because it was more complete than Iceland Academy’s payroll records.

The Determination notes that Iceland Academy contravened the following sections of the *Act*:

Section

- 17(1) Wages must be paid semi - monthly;
- 18(2) Wages owing must be paid within 6 days after an employee terminates;
- 20 How wages are paid;
- 21 Employer must not withhold, deduct or require payment of all or part of an employee's wages for any purpose;
- 34(2) Minimum daily hours;
- 40(1) Employer must pay overtime wages;
- 44 Entitlement to statutory holiday pay;
- 58 Vacation pay.

Schacter's two sons (Ryan and Tyler) were enrolled in Iceland Academy's sport development program. The boy's parent co-signed an agreement between them and Iceland Academy and elected payment option #2 in the Academy's fee schedule.

Iceland's Appeal is based on "...a very special employment agreement" that Schacter "...net earnings would be applied to her son's tuition fees." The fees payable for both boys amount to \$11,050.00 (10 monthly payments of \$990.00 plus Initiation Fee and a Deposit Fee).

Iceland Academy asserts that this agreement was made to assist Schacter meet the cost of her son's tuition fees and was understood fully by her.

All other employees of Iceland Academy are paid bi-monthly.

Schacter did not complain during her employment with Iceland Academy.

ANALYSIS

Iceland Academy's appeal is based on the following argument:

- There was a "special verbal agreement" between Schacter and Iceland Academy which provided a financial benefit to Schacter;
- Fees payable for two boys in the academic and athletic program amount to \$11,050.00;
- Schacter's sons were enrolled in the program on the understanding that her after tax earnings would be applied to her son's tuition fees payable;
- Schacter resigned without notice on November 29, 1995
- Schacter owes Iceland Academy \$10,000.00 in "withdrawal fees" under a term of their fee schedule agreement;

Iceland Academy also argues that the hours worked by Schacter during June, 1995 were volunteer hours for which it decided to pay her \$8.00 per hour as part of the "special agreement". It also argues that the \$3.00 per hour wage increase effective September 1, 1995 was a special arrangement to help offset the cost of her children's tuition fees.

Section 4 of the *Act* states:

Requirements of this *Act* cannot be waived

The requirements of this *Act* or the regulations are minimum requirements, and an agreement to waive any of those requirements is of no effect, subject to sections 43, 49 61 and 69

The Determination sets out the various sections of the *Act* which Iceland Academy contravened. Iceland Academy does not deny these contraventions. Rather, it argues that its agreement with Schacter is fair and reasonable. It also argues that being required to pay the amount of the Determination would be a "further financial hardship" because Schacter has refused to pay the remaining balance of tuition fees payable to Iceland Academy.

While I accept as a fact that Schacter and Iceland Academy entered into a "special agreement", I find that I am unable to vary the Determination.

Section 21(1) of the *Act* is of particular relevance:

Deductions

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.

Section 21 expressly prohibits an employer from attempting, directly or indirectly, to do what Iceland Academy and Schacter agreed to do.

I reject the agreement that the hours worked by Schacter in June, 1995 were volunteer hours. Iceland Academy's payroll records and income tax records show these as paid work hours. Similarly, Schacter's hourly wage of \$11.00 per hour effective September 1, 1995 is the basis for all payroll and income tax records

For all these reasons I conclude that I am unable to vary the Determination.

ORDER

I order, pursuant to Section 115 of the *Act*, that Determination # CDET 001798 be confirmed.

Geoffrey Crampton
Adjudicator
Employment Standards Tribunal

GC:jel