

An appeal

- by -

Eva Ferdinand
("Ferdinand")

- 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: James Wolfgang

FILE No.: 2000/854

DATE OF DECISION: March 12, 2001

DECISION

OVERVIEW

The original Determination was dated on September 15, 1999 and found the complaint by Eva Ferdinand (“Ferdinand”) was untimely and the Branch was without jurisdiction. Ferdinand appealed that decision to the Tribunal. The adjudicator found there was evidence the appeal was timely, and referred the matter back to the Director of Employment Standards (the “Director”) for investigation.

The delegate for the Director confirmed the complaint was timely and issued a decision in the form of a report dated December 1, 2000 in which Ferdinand was to be paid termination pay, wages vacation pay in the amount of \$447.13 including interest.

B.D.F. Properties Ltd. (“B.D.F.” or the “employer”) disputes that decision on January 11, 2001 claiming no money was owed Ferdinand.

ISSUES

Does B.D.F. owe Ferdinand the amount determined by the Director?

FACTS AND ARGUMENT

The correspondence to the parties from the Tribunal dated December 19, 2000 requests any response to be in writing specifying whether the party agrees or disagrees with the report of the Director. The parties were requested to include a copy of all records and documents that support their position.

The only argument submitted by B.D.F. is outlined in a fax to the Tribunal dated January 11, 2001. The owner of D.B.F., Mr. D. Fulton (Fulton), indicated he had been out of the country and was unable to respond by January 9th. Fulton states:

“As the employee arranged with me for moneys owed to be deducted from salary we will not be paying and (sic) money to anyone”.

Ferdinand did not send in a response.

ANALYSIS

In the original Determination the Director ruled the appeal by Ferdinand was outside the time limits of the *Employment Standards Act* (the “*Act*”) and the Branch was without jurisdiction. The Decision of the Tribunal found sufficient doubt in the date of termination and the time of filing a complaint to refer the matter back to the Director for further investigation. Little information was included in the original Determination, which was also part of the reason for reference back to the Director.

As a result of the second investigation the delegate of the Director found the appeal was timely and informed B.D.F. accordingly. The delegate indicates he contacted Fulton and, while he had concerns, Fulton was prepared to pay termination pay. There is no reference in the report dated December 1, 2000 of any monies owed by Ferdinand to B.D.F. There is however, a reference to a statement by Fulton that Ferdinand was:

“paid in excess of what was required on her regular salary”.

The delegate investigated that matter and found, while Ferdinand had received advances in the month of July 1998, they were less than her earnings for the month, and she was owed \$7.66. That amount was added to the termination pay plus vacation pay and interest and totaled \$447.13. B.D.F. must have been aware of that when they filed their submission with the Tribunal. Therefore I must assume they may be referring to money other than earnings.

There is no reference in the report of the delegate to any money owed B.D.F. by Ferdinand or any agreement to have such money deducted from her salary. There was no other information or documents included by B.D.F. to support the position Ferdinand owed B.D.F. money or the amount of such indebtedness.

Section 21 (1) of the *Act* states:

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 of the *Act* prevents an employer from deducting any money from an employee without proper authorization as prescribed in Section 22 of the *Act*. If Ferdinand owes B.D.F. money it cannot be collected from earnings without a signed authorization.

I find the delegate was correct in ordering B.D.F. to pay Ferdinand the amount indicated above.

ORDER

In accordance with Section 115 of the *Act* I confirm the decision in the report of the delegate of the Director dated December 1, 2000 and so vary the Determination dated September 15, 1999 to show B.D.F. owes Ferdinand \$447.13. Additional interest is to be calculated in accordance with Section 88 of the *Act*.

JAMES WOLFGANG

**James Wolfgang
Adjudicator
Employment Standards Tribunal**