

An appeal

- by -

Nu-Style Exteriors Inc.
("Nu-Style")

- 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.: 2000/875

DATE OF DECISION: March 23,2001

DECISION

OVERVIEW

This is an appeal by Nu-Style Exteriors Inc. (“Nu-Style” or the “contractor”) under Section 112 of the *Employment Standards Act* (the “Act”) from a Determination dated December 8, 2000 issued by the Director of the Employment Standards Branch (the “Branch”). Renald J. Boulanger (“Boulanger”) filed a complaint with the Employment Standards Branch on September 2, 2000 claiming Nu-Style made unauthorized deductions from his final cheque. The Determination found Nu-Style had contravened Section 21 of the *Act* and owed Boulanger \$549.19.

Nu-Style claims there were errors in the Determination, which they corrected in their submission to the Tribunal received December 22, 2000.

ISSUE TO BE DECIDED

Were the deductions by Nu-Style from the final cheque of Boulanger made in accordance with the *Act*?

FACTS

Nu-Style is a contractor doing renovation work on high-rise buildings.

The Determination was in error in saying Boulanger was hired to replace windows that were leaking. Both Boulanger and the contractor agree the work was replacing stucco and brick panels.

Boulanger was employed by Nu-Style from August 10, 2000 until August 23, 2000 when he quit. He was teamed with another employee hired on the same day.

Nu-Style claim Boulanger was hired as a semi-skilled masonry tradesman. Boulanger claims he was hired as a labourer.

Nu-Style claim Boulanger and the other employee were hired on the understanding they would supply their own personal tools. According to Nu-Style, when they reported for work it was found they had no tools and the contractor supplied them with tools from the company tool crib. Robert Felstead, the office manager, issued a tool card to Boulanger.

According to the Determination, Boulanger never signed the tool card or document showing he had taken tools from the tool crib.

The contractor claim the following procedure is used on supplying tools to employees. The employee’s sign out the tools from the tool crib and at the end of the first pay period the employees purchase their own tools, return the contractor tools and have their tool card voided.

Further, according to the Determination, the contractor stated:

The employer advised that he has been in this business many years. It has been common practise, within the industry that when tools are provided by the employer and are not returned or go missing the employer has recovered the cost for these tools directly from the employee.

The employer's position is that if the tools are returned then he will reimburse the complainant. The employer does not have any direct evidence that the complainant in fact took the tools. Accordingly, the employer is not prepared to reimburse the complainant the amount of monies for the tools.

Nu-Style also claim Boulanger was issued an electronic pass card for the building and a key for the lockup area in the building.

Boulanger admits he and the other employee were supplied with tools from the contractor. Boulanger claims the tools were actually assigned to the other employee and Boulanger only used the tools once and he did not take them. Boulanger stated he came to work with a tool pouch, which he still has, and there was no understanding he would supply other tools. Boulanger denies receiving an electronic pass card to enter the building.

The tools issued to Boulanger and his co-worker were not returned when the co-worker and Boulanger quit. The other employee quit on August 21, 2000 and Boulanger quit 2 days later on August 23, 2000. We have no evidence if the tools were still on site after the other employee quit.

Nu-Style deducted ½ of the cost of the tools from the final cheque of Boulanger and the other worker. Boulanger was also charged \$180.00 for a window that was broken by negligence.

Boulanger indicates there is a number of security cameras on site and the contractor should get the tapes from those to see who took the tools.

Nu-style made some corrections in facts on the Determination however the delegate indicates they were not such that would change the outcome.

In their submission to the Tribunal received December 22, 2000 Nu-Style indicate they are prepared to issue a cheque to Boulanger for \$180.00 to cover the deduction for the broken window so that matter is no longer before the Tribunal, providing the cheque is issued to Boulanger.

ANALYSIS

The Determination found the facts relating to the tools are not in dispute. Tools were supplied to Boulanger and the other employee. When they quit the tools were not returned to the contractor. In addition, there is no dispute the window was damaged.

The contractor deducted ½ of the cost of the lost tools from each Boulanger and the other employee. That suggests the tools were missing when the other employee quit. If Boulanger remained working two days after the other employee quit what tools did Boulanger use?

The question is can the contractor deduct the cost of the missing tools from the employees? Section 21 of the *Act* requires that money cannot be deducted from an employee's wages without a written authorization from the employee.

Section 21 of the *Act* states:

- (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. (emphasis added)
- (2) An employer must not require an employee to pay any of the employer's business costs except as permitted by the regulations.

There is no evidence any written authorization was given by Boulanger to the contractor in accordance with Section 22(4) of the *Act* and therefore the deductions cannot be made.

If there is any proof the tools were taken by Boulanger there are other avenues available to the contractor to get relief.

ORDER

In accordance with Section 115 of the Act the Determination dated December 8, 2000 is confirmed and Nu-Style is ordered to pay the amount of \$549.19 plus additional interest as per Section 88 of the *Act*. If the cheque for \$180.00 for the broken window has been issued to Boulanger the above amount is reduced by that amount.

JAMES WOLFGANG

**James Wolfgang
Adjudicator
Employment Standards Tribunal**