



An appeal

- by -

Donald Perlitz operating Rim Rock Haven Ranch
(“Rim Rock”)

- 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.: 2000/863

DATE OF DECISION: March 23, 2001

DECISION

OVERVIEW

This is an appeal by Donald Perlitz operating Rim Rock Haven Ranch (“Rim Rock”) under Section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of the Employment Standards Branch dated November 27, 2000. In the Determination Rim Rock was classified as a working ranch.

Veronica Bradley (“Bradley”) claimed that Rim Rock did not pay all wages owing, that unauthorized deductions were taken from her pay cheque, and she was owed overtime for work in excess of 8 hours per day and 40 hours per week

Scott Moore (“Moore”) claimed he did not receive minimum wage for all hours worked, that unauthorized deductions were taken from his pay cheque and he worked in excess of 8 hours per day without receiving overtime compensation.

The Determination found both Bradley and Moore were farm workers and were not eligible for overtime as per Section 23 and 34.1 of the *Employment Standards Regulation* and found Rim Rock had contravened the Act and owed Bradley \$490.03 and Moore \$77.52.

The Director also imposed a penalty of \$0.00 on Rim Rock.

Neither Bradley nor Moore made any submissions to the Tribunal.

ISSUE TO BE DECIDED

In accordance with the Act, can Rim Rock deduct money from Bradley or Moore’s pay cheques without written authorization?

FACTS

Bradley was employed from March 21, 2000 to May 13, 2000 as a farm hand at the rate of \$7.50 per hour. During that time she worked 70 hours. Rim Rock claims Bradley was on welfare and did not want to be paid wages. She had requested the equivalent of earnings in farm goods and produce. Rim Rock claims Bradley wanted to earn enough credit to purchase a number of pigs but did not work enough time to finalize the deal.

Moore was employed as a farm hand from May 25, 2000 to May 29, 2000. The Determination calculated his rate of pay to be \$7.15 for the 28 hours he worked.

The Determination found the records of Rim Rock in respect to hours worked to be accurate and the delegate relied on those hours.

During her employment Bradley admits to making a number of purchases on credit from Rim Rock including pigs, pork, feed, gas, eggs and honey. According to Rim Rock the amount owed totals \$453.71 which included meals. That amount was deducted from her last cheque and the balance of \$71.29 was paid to Bradley. Rim Rock claim this was by mutual agreement but was not in writing. As Bradley made no submission to the Tribunal in respect to the list of items purchased or the amount owed to Rim Rock in the appeal we assume that to be correct. Both Bradley and Rim Rock agree that Bradley made no written assignment of wages.

Rim Rock argues the monies deducted were not a “cost of doing business” as identified in Section 21(2) of the *Act*. Rim Rock claim these were “products” the employees took home.

Rim Rock claims Moore requested to work by the month and was to receive \$1,200.00 per month plus room and board worth \$600.00. Rim Rock states Moore first told Employment Standards he was to receive \$12.00 per hour but later changed that to \$10.00 per hour. Rim Rock also claim Moore took 5 dozen eggs without permission and when asked where the eggs were Moore indicated he had taken them and to deduct them from his wages. Rim Rock calculated Moore had earned \$140.00 and paid him \$125.00 less \$15.00 for the eggs.

There is no evidence of any written assignment of wages signed by Moore.

ANALYSIS

The number of hours worked by Bradley and Moore were taken from the records of Rim Rock and are not in dispute.

The Determination does deal with the question of compensation for all hours worked by Bradley and Moore. In the case of Bradley the number of hours worked and the rate of pay is correct however Rim Rock deducted \$451.71 from the wages of Bradley.

In the case of Moore, the Determination finds the hours worked are correct however the rate of pay was less than the minimum wage and ordered Moore to be paid \$200.20 plus interest less wages received in the amount of \$125.00.

The Determination indicates there is no dispute the purchases were made by Bradley and Moore. The only matter in dispute before the Tribunal is the question of whether Rim Rock was correct in deducting purchases made by Bradley and Moore from their pay cheques without a written assignment of wages.

There is considerable evidence to indicate Rim Rock had a “good faith” agreement with both Bradley and Moore on items purchased however the *Act* requires a written authorization for the deduction of monies owed from earnings.

Section 21(1) 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)

Section 22 (4) of the *Act* states:

- (4) An employer may honour an employee's written assignment of wages to meet a credit obligation. (emphasis added)

Therein lies the problem. I accept both Bradley and Moore received goods from Rim Rock and may well have indicated to Rim Rock to have the value of them deducted from their pay cheques. However, without a written authorization from each Bradley and Moore the Tribunal cannot allow the recovery of money owed in that manner.

If Rim Rock is to recover the monies owed it must be in another forum. The Tribunal is without jurisdiction to comply with the appeal by Rim Rock.

The reference to Section 21 (2) of the Act does not appear to have any bearing on this case as the issue of the "cost of doing business" is not addressed in the Determination and is not before the Tribunal.

There is a duty on the appellant to convince the Tribunal the delegate made an error in fact or in law. While I have sympathy for the case of Rim Rock I find no such evidence of error and the Determination is upheld.

ORDER

In accordance with Section 115 of the Act the Determination dated November 27, 2000 is confirmed and Rim Rock is ordered to pay the amount of \$490.03 to Bradley and the amount of \$77.52 to Moore plus additional interest as per Section 88 of the *Act*.

JAMES WOLFGANG

James Wolfgang
Adjudicator
Employment Standards Tribunal