

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 -

Harjit Singh Parmar and H.K. Parmar
Operating H & H Trucking
("H & H Trucking")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 96/291

DATE OF DECISION: May 4, 2001

DECISION

OVERVIEW

This is an appeal by Harjit Singh Parmar and H.K. Parmar operating H & H Trucking (“H & H Trucking”) under Section 112 of the *Employment Standards Act* (the “Act”) against Determination No. CDET 001867. The Determination was issued by a delegate of the Director of Employment Standards on April 4, 1996. In this appeal H & H Trucking claim that no wages are owed to Clifford Dale (“Dale”).

The Director’s delegate determined, following his investigation, that H & H Trucking made unauthorized deductions from Dale’s wages and owed Dale annual vacation pay.

I have completed my review of H & H Trucking’s appeal, as well as the information provided to the Tribunal by the Director’s delegate and have decided to confirm the Determination.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether H & H Trucking owes wages to Dale in the amount set out in the Determination.

FACTS

The Reason Schedule attached to the Determination shows the Director’s delegate concluded that H & H Trucking made unauthorized deductions from Dale’s wages contrary to Section 21 (1) of the *Act*. The deductions were for truck down time and a dangerous goods course. As well, the Director’s delegate concluded that Dale was owed annual vacation pay.

In its appeal, H & H Trucking confirmed it made the above deductions from Dale’s final wages. The following reasons are given for the deductions:

1. \$200.00 for “Truck Down - 2 days”
Mr. Dale failed to give any notice of his intention to quit. He was expected for work for 2 consecutive days and failed to show before he told anyone he was no longer working for H & H Trucking. The truck remained in its parking site and 2 days revenue were lost from it.

2. \$40.00 for “Dangerous Goods”

Mr. Dale took a Dangerous Goods course. He had no money to pay for the course himself, so H & H Trucking paid it, with the understanding that it was a loan.

H & H Trucking makes no reference to the issue of vacation pay in the appeal. A claim is made, however, that H & H Trucking also had to pay \$780.58 as a result of Dale damaging some freight. This cost, according to H & H Trucking, should have been borne by Dale as per his employment contract which indicates he accepts responsibility for speeding ticket, fines at scales, the welfare of the truck and all damage to flats.

In a letter dated May 13, 1996 to H & H Trucking, the Tribunal provided a copy of all documents disclosed by the Director’s delegate concerning this Determination. H & H Trucking was invited to make a response by June 3, 1996. No response was received by the Tribunal.

ANALYSIS

Section 21 (1) of the *Act* prohibits an employer from withholding wages from an employee for any reason, except for income tax, CPP, UIC and a court order to garnishee an employee’s wages. Section 21 (2) of the *Act* prohibits an employer from requiring an employee to pay any of the employer’s business costs by withholding the employee’s wages. Section 22 (4) of the *Act* states that an employer may honour an employee’s written assignment of wages to meet a credit obligation.

Given the above, H & H Trucking cannot deduct wages from Dale for the reasons they give in this appeal. Furthermore, there is no evidence to support the claim that H & H Trucking loaned money to Dale for a course, nor is there any evidence which would indicate Dale gave written authorization to H & H Trucking to deduct wages to meet any alleged credit obligation in this area.

Section 4 of the *Act* states that any agreement to waive the minimum requirements under the *Act* has no effect. Accordingly, whatever employment contract that existed between H & H Trucking and Dale concerning the payment of damaged freight is null and void and is not relevant in deciding this appeal.

Given the above, I conclude Dale is owed wages in the amount calculated by the Director’s delegate.

ORDER

I order, under Section 115 of the *Act*, that Determination No. CDET 001867 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal

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