

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

- by -

Ron Konowalchuk
operating as Whiskeyjack Contracting

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: John M. Orr

FILE NO.: 98/95

DATE OF DECISION: April 16, 1998

DECISION

OVERVIEW

This is an appeal by Ron Konowalchuk operating as Whiskeyjack Contracting ("Konowalchuk") pursuant to Section 112 of the Employment Standards Act (the "*Act*") from a Determination (File No. 87-412) dated January 23, 1998 by the Director of Employment Standards (the "Director").

In the Determination the Director's Delegate found that Konowalchuk owed wages to a number of employees to a total amount including interest of \$12,635.46. Konowalchuk has appealed on the grounds that several employees were paid in full in cash, others owed money for groceries and other supplies advanced by the business, and yet others owed money to company for items of property taken by the employee from the business and not returned. He also appeals on the grounds that the Delegate has not allowed for statutory deductions in calculating the amounts owed.

ISSUE TO BE DECIDED

The issues to be decided in this case are (1) whether the business owes wages to the employees and whether monies owed by the employees to the business for such things as rent, food, equipment, and other supplies should be properly deducted from the amounts owed; (2) whether proper allowance has been made for cash payments; and (3) whether the Delegate made allowance for statutory deductions in calculating the amounts owed.

FACTS

There appears to be no dispute in this case that the named complainants were in fact employees of Whiskeyjack Contracting and that they were employed for the times and on the terms set out by the Director's Delegate. There is also no dispute that Whiskeyjack Contracting is a business owned and operated by Ron Konowalchuk.

Konowalchuk sets out in his appeal that his wife was the bookkeeper responsible for keeping adequate records and for making sure that the employees were all properly paid. The employees included his wife's daughter, the daughter's lover, and the wife's lover. When Konowalchuk and his wife separated several employees including the lovers went to work for the wife. It is these ex-employees who have claimed for wages owed. Konowalchuk believes these claims are motivated by the ill feelings that have arisen over the separation. He claims that the wife could have established that all employees, including her daughter and her lover, were paid in full and it is unfair to hold him responsible for the acts of his wife.

It is also clear that it was an established practice that employees were allowed to purchase supplies and equipment and to rent accommodation the cost of which would be deducted from their pay cheques from time to time. It also is undisputed that some employees were paid in cash. No records are available of the cash payments, except where they are admitted.

ANALYSIS

It is very possible that Konowalchuk is correct that some employees were paid in cash and in fact that is admitted in part. It is also very possible that employees owe Konowalchuk for groceries, supplies, equipment, and rent. Even on the evidence gathered by the Director's Delegate it appears to be true that these things did occur.

However, it is impossible to accurately quantify the cash transactions because proper records were not kept of the cash payments. Where there is no dispute about cash payments being made the Delegate has credited those payments against the amount owing. Sections 27 and 28 of the *Act* requires the employer to provide each employee with proper wage statements and to keep proper records. Whether or not it was the job assigned to Konowalchuk's wife it is still his legal duty to ensure that proper records are kept. He can not now rely on the absence of proper accounting records to deny the claims of the employees.

In terms of the purchases made by the employees and money owed by them to the employer Section 21 of the *Act* expressly forbids any deductions from the employee's wages for any purpose. The *Interpretation Guidelines* published by the Ministry of Labour indicate that no deductions may be made "except with the employee's written permission". In this case there was no written permission even if the *Act* could be interpreted as allowing such deductions.

Konowalchuk may not set-off amounts owed to him by the employees, whether it be for rent, groceries, or stolen property, against wages legitimately owed to those employees.

The Appellant is concerned that the Delegate has not calculated into the amount owing the statutory deductions such as C.P.P., U.I.C., and Income Tax. However, the Determination states in the portion headed "**Payment Required**" that "If statutory deductions are required, please provide a statement with your payments indicating the individual amounts remitted to Revenue Canada". The employer is required to treat the amounts payable to each employee as wages due and is therefore required in law to make the necessary deductions. It is not the duty of the Delegate to calculate these deductions.

In my opinion the Delegate has, as accurately as the records allow, fairly calculated the amount of wages owing to each complainant. The employer will have to seek other remedies for the theft of his property and debts owed to him by these employees.

ORDER

I order, under Section 115 of the *Act*, that the Determination is confirmed.

JOHN M. ORR
ADJUDICATOR,