

**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-

481619 B.C. Ltd. operating Service Master of Victoria  
("Service Master")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

|                          |                |
|--------------------------|----------------|
| <b>ADJUDICATOR:</b>      | C. L. Roberts  |
| <b>FILE NO:</b>          | 1999/141       |
| <b>DATE OF DECISION:</b> | April 19, 1999 |

## DECISION

This is a decision based on written submissions by Alan Bowles on behalf of 481619 Ltd. operating Service Master of Victoria, and Terry Hughes, delegate of the Director of Employment Standards.

### OVERVIEW

This is an appeal by 481619 Ltd. operating Service Master of Victoria ("Service Master"), pursuant to Section 112 of the *Employment Standards Act* ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued February 12, 1998. The Director found that Service Master contravened Sections 44 and 45 of the Act in failing to pay Richard Barker ("Barker") statutory holiday pay, and Ordered that Service Master pay \$578.90 to the Director on behalf of Barker. The Director also imposed a penalty of \$0.00 for contravening one of the objective standards set out in Part 5 of the Act (the statutory holiday provision).

### ISSUE TO BE DECIDED

Whether the Director correctly determined that Barker was entitled to statutory holiday pay.

### FACTS

Barker worked for Service Master as a carpet technician from July 27, 1997 to February 21, 1998. He was paid first on an hourly basis, then on a piece work basis. On March 11, Barker filed a complaint with the Director alleging that he did not receive compensation for statutory holidays.

Service Master acknowledged that Barker had not been paid for statutory holidays, and advised that all commission employees would be. However, Service Master argued that Barker should not be paid anything further, since he stole company property.

Barker acknowledged that he had been convicted of being in possession of company property. He indicated to the Director's delegate that he returned the property, and was fined \$200.00.

The Director's delegate found that Barker had not been paid for statutory holidays, and determined that Service Master owed Barker \$578.90.

### ARGUMENT

Service Master acknowledged on appeal, as it had to the Director's delegate, that Barker had not been paid statutory holidays, contrary to the Act. However, it contends that the Determination is in error since it fails to consider the circumstances of Service Master, and seeks to have the Determination set aside "on the principals of ethics and fairness to ourselves."

Mr. Bowles argues that Service Master will not recover the loss of items stolen by Barker, nor will it be "compensated for the damage to our reputation caused by Mr. Barker's criminal drug activities."

## **ANALYSIS**

Service Master does not dispute the Director's finding that Barker is owed compensation for statutory holidays. Service Master contends however that it ought to be entitled to offset money owing to Barker against the time and inconvenience it suffered as a result of his criminal behaviour.

Section 21 (1) of the *Act* provides as follows:

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.

Since wages is defined to include "money... required to be paid to by an employer to an employee under this Act," statutory holiday pay is included in Section 21.

Whatever sympathy one might have for an employer in these circumstances, the *Act* expressly prohibits the withholding of wages without the employee's written consent. The Tribunal has repeatedly denied the attempts of employers to offset amounts allegedly owing to it by an employee, whether those arise out of civil or criminal actions. (see *Vancast Investments Ltd. v. British Columbia (Director of Employment Standards)* B.C.E.S.T.D. 010/96, and *Classic Collision Ltd. v. British Columbia (Director of Employment Standards)* B.C.E.S.T.D. 173/97).

The Tribunal has no jurisdiction to act, as Service Master suggests, "on the principals of ethics and fairness." It can only apply the law, as set out in the *Act*.

Service Master has the opportunity to recover costs against Barker in a forum other than the *Employment Standards Act*.

The appeal is denied.

## **ORDER**

I order, pursuant to Section 115 of the *Act*, that the Determination dated February 12, 1999 be confirmed in the amount of \$578.90, together with whatever further interest that may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

**Carol Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**