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-

Classic Collision Ltd.

("Classic Collision")

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 97/33

DATE OF DECISION: April 29th, 1997

DECISION

OVERVIEW

This is an appeal brought by Classic Collision Ltd. ("Classic Collision" or the "employer") pursuant to section 112 of the *Employment Standards Act* (the *"Act"*) from a Determination issued by the Director of Employment Standards (the "Director") on December 19th, 1996 under file number 010793.

The Director determined that Classic Collision improperly deducted certain moneys from the final pay cheque of its former employee, Brian Moody ("Moody"). In the net result, the Director ordered Classic Collision to pay the sum of $1,999.75 including interest.

FACTS

Moody was employed as a painter with Classic Collision from May 18th to August 1st, 1996. It is clear that the employer considers Moody to have been an entirely unsatisfactory employee. Much of the employer's written submission dated January 8th, 1997 and filed in support of its appeal addresses the alleged shortcomings of Moody. However, I would note that Moody apparently quit his employment voluntarily and the Director has not determined that Moody was wrongfully dismissed [in any event, Moody was not employed for the minimum three-month period required before compensation for length of service is payable under section 63(1) of the *Act*].

According to the employer, on June 7th, 1996, Moody was involved in a motor vehicle accident while driving a motor vehicle owned by Classic Collision. Apparently, Moody was issued a traffic ticket and was subsequently assessed by an I.C.B.C. adjuster to be entirely responsible for the accident. If the foregoing allegations are ultimately found to be accurate, Classic Collision will suffer a pecuniary loss for which Moody may be held liable. Subsequent to the accident, Moody signed a two-page handwritten note, dated June 11th, 1996, which reads, in part, as follows (paragraph number 9):

> You are to be responsible for paying back company collision deductible for accident of June 7/96 & any additional <u>costs</u> of ins garage policy that are incurred as a direct result of said accident. (sic)

It is my understanding that the employer, relying on this agreement, deducted certain moneys from Moody's final paycheque. It is my further understanding that the balance of the moneys deducted from Moody's final paycheque represented a "loan" from the employer to Moody so that Moody could purchase some paint guns that would be used in his work as a painter with

Classic Collision and reimbursement for personal courier fees that were charged, apparently with authorization, to Classic Collision's account.

ANALYSIS

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

> *21. (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 21(2) of the *Act* states that an employer must not require an employee to pay any of the employer's business costs (except as permitted by regulation).

Section 22 of the *Act* provides that an employer must honour an employee's written assignment of wages in certain specified instances, none of which is relevant here, save possibly subsection 22(4) which provides that:

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

Whether or not Classic Collision is entitled to claim against Moody for reimbursement of the insurance deductible and other related costs arising from the June 7th motor vehicle accident, or for moneys advanced in order that Moody could purchase some paint guns [and I am not satisfied that the employer is on solid footing with respect to these two claims in light of subsection 21(2) of the *Act*], the mandatory language of section 21(1) of the *Act* prohibited Classic Collision from deducting these claims from Moody's wages.

The section 21(1) prohibition regarding deductions from wages applies even if Moody authorized the particular wage deductions at issue in this case because section 4 of the *Act* prohibits any "contracting out" of the *Act.* In my view, if Classic Collision wishes to pursue Moody for reimbursement, it must do so by way of a separate civil action; Classic Collision was not entitled to engage in a form of "self-help" by simply deducting these claims from Moody's final payroll cheque.

The employer argues that the reimbursement claims amount to a "credit obligation" within section 22(4) of the *Act*. I do not agree.

First, the handwritten note of June 11th may well be too vague to be an enforceable contractual obligation--I note that no specific dollar figure is set out in paragraph nine of that note (quoted above). Second, the employer's claim, not having been crystallized to a specific dollar figure and

not having been proved before a court of competent jurisdiction could not, therefore, be characterized as a "credit obligation" when the deduction was made. At best, at the time of the deduction, Classic Collision had a pending claim for reimbursement that may well, in the fullness of time, be validated. But, as yet, Moody has not been declared to be indebted to the employer in any amount, let alone the amount claimed by the employer.
Third, I am not satisfied that paragraph nine of the handwritten note constitutes a "written assignment" as required by the subsection; in the note Moody purports to agree to "pay back" Classic Collision--there is no authority contained in that note authorizing the employer to deduct wages. Assuming, without deciding, that an employee could have a credit obligation to his or her employer (for example, some school districts purchase home computers for staff members who, in turn, specifically agree in writing to repay the district via a payroll deduction plan), section 22(4) requires a clear and unequivocal *written assignment of wages* (*i.e.*, an express written authority and direction to deduct a certain sum from future wages). There is no such written assignment in this case.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated December 19th, 1996 and issued under file number 010793 be confirmed as issued in the amount of $1,999.75 together with whatever further interest that has accrued since the date of issuance.

Lastly, I should note, since this issue was specifically raised by the employer, that Classic Collision, when paying the amount due under the Determination is, of course, entitled and obliged to make the necessary statutory deductions and remittances on account of employment insurance and the Canada pension plan.

Kenneth Wm. Thornicroft,
Adjudicator
Employment Standards Tribunal