

**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 -

Pacific Ice Company Inc.  
("Pacific Ice")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO:** 96/357

**DATE OF DECISION:** July 15, 1996

**DECISION**

**OVERVIEW**

This is an appeal by Pacific Ice Company Inc. (“Pacific Ice”), under Section 112 of the *Employment Standards Act* (“Act”), against Determination CDET No. 002334 issued by a delegate of the Director of Employment Standards on May 24, 1996.

The Determination found that Pacific Ice owed wages to Samuel Mitchell Harnett (“Harnett”) as a result of making an unauthorized deduction from Harnett’s wages.

**FACTS**

The Reason Schedule attached to the Determination sets out the positions of both Pacific Ice and the Director’s delegate.

The only reasons given by Pacific Ice for its appeal are:

*“This was neglect on the part of Samuel Mitchell Harnett. I request a personal meeting...to discuss this matter. A written decision is not acceptable.”*

When requested by the Tribunal to respond to the documents provided by the Director’s delegate, Pacific Ice made the following reply:

*“I do have additional information on this matter. Due to the nature of it I am requesting again a personal hearing ...”*

The Determination sets out that Harnett admitted to causing damage to one of Pacific Ice’s vehicles and that Pacific Ice admits to deducting the cost of repairs from Harnett’s wages.

## ANALYSIS

Pacific Ice's appeal does not challenge any of the substantive facts or reasoning that are set out in the Determination.

Section 21 of the *Act* states, in part:

- (1) Except as permitted or required in 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.
- (2) An employer must not require an employee to pay for any of the employer's business costs except as permitted by the regulations.

The *Act* does not require the Tribunal to hold an oral hearing in every appeal.

Section 107 of the *Act* provides that:

Subject to any rules made under section 109(1)(c), the tribunal may conduct an appeal or other proceeding in the manner it considers necessary and is not required to hold a oral hearing.

Section 107 is a clear statement of legislative intent that the Tribunal has the flexibility to determine its own processes, but does not relieve the Tribunal of its obligation of procedural fairness. One of the procedural questions for the Tribunal in a given case is whether to hold an oral hearing. Section 107 speaks directly to that issue when it says that the Tribunal "is not required to hold an oral hearing." Thus, the Tribunal is not required to hold an oral hearing merely because an appellant requests one. The question, then, is when must the Tribunal hold an oral hearing to ensure a fair hearing ?

The short answer to that question is that the Tribunal is likely required to hold an oral hearing in either of two circumstances:

1. The case involves a serious questions of credibility on one or more key issues;  
or
2. An oral hearing is the only adequate way of ensuring that each party can state its case fairly.

This appeal does not involve a serious issue of credibility because, as noted above, the important facts are not in dispute. There is nothing in Pacific Ice's appeal which leads me to conclude that an oral hearing is the only means of ensuring that each party can state its case fairly.

Section 21(2) of the *Act* prohibits Pacific Ice from withholding wages owed to pay for any part of an employer's business costs.

**ORDER**

I order, pursuant to Section 115 of the *Act*, that Determination CDET No. 002334 be confirmed.

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**Geoffrey Crampton**  
**Adjudicator**  
**Employment Standards Tribunal**

GC:sr