

**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-

Econowise Administrative Services Ltd.

(“Econowise” or the “employer”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 98/78

**DATE OF DECISION:** May 5th, 1998

## DECISION

### OVERVIEW

This is an appeal brought by Econowise Administrative Services Ltd. (“Econowise” 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 February 2nd, 1998 under file number 57-180 (the “Determination”).

The Director’s delegate determined that Econowise owed its former employee, William Ronald (“Ronald”), the sum of \$1,185.78 on account of two weeks’ wages as compensation for length of service [see section 63(2)(a) of the *Act*], concomitant vacation pay (section 58) and interest (section 88). As set out in the Determination, the employer did not challenge Ronald’s entitlement to compensation for length of service but claimed a “set-off” for personal telephone calls made by Ronald and for company uniforms that he allegedly failed to return (these claims were denied by Ronald).

In a letter dated February 4th, 1998 addressed to the Tribunal and appended to the employer’s appeal form, the employer acknowledges that “We are in agreement that two weeks severance pay is owed [to Ronald].” However, the letter goes on to note that the full amount of the Determination has been paid into the B.C. Provincial Court pursuant to a garnishing order. There are no formal grounds of appeal set out in either the appeal form or the accompanying letter.

### ANALYSIS

The Director’s delegate quite rightly noted in the Determination that the employer’s claims for reimbursement for telephone charges and for the value of unreturned uniforms are not the sort of claims that can be deducted from an employee’s wages or compensation for length of service--see sections 21 and 22 of the *Act*. The proper course for the employer to follow is to file a claim against the employee in the small claims division of the Provincial Court--something the employer has now done. However, until such time as the employer has a *monetary judgment* in its favour, it is not entitled to simply set-off the amount of its claim against wages that are otherwise due and payable to the employee under the *Act*.

Further, once a Determination has been issued, the Director is free to seek to collect the monies due thereunder (say, by issuing a third party demand, or “garnishing order”, under section 89 of the *Act*) and the filing of an appeal does not, of itself, create a “stay of proceedings”; a Determination can only be suspended by an order of the Tribunal--see Part 11 and section 113 of the *Act*.

### ORDER

Pursuant to section 114(c) of the *Act*, I order that the employer's appeal be dismissed and that the Determination be confirmed as issued in the amount of **\$1,185.78** together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

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**Kenneth Wm. Thornicroft, *Adjudicator***  
**Employment Standards Tribunal**