

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 -

Robert Marchand
operating as
Little Kingdom Self Serve

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: John M. Orr

FILE No.: 2000/128

DATE OF DECISION: May 4, 2000

DECISION

OVERVIEW

This is an appeal by Robert Marchand ("Marchand") operating as Little Kingdom Self Serve pursuant to Section 112 of the *Employment Standards Act* (the "Act") from a Determination dated February 2, 2000 (ER# 90784) by the Director of Employment Standards (the "Director").

The Director determined that an employee, Frank Schaeffer ("Schaeffer") was employed by Marchand at his butcher's business from January 9, 1999 to March 2, 1999 and that Schaeffer had not been paid wages and holiday pay as required by the *Act*. Marchand has appealed on the ground that Schaeffer had sold some beef which was not for retail sale but belonged to a customer. As a result, the owner of the beef sought compensation from Marchand. Marchand claims that he is out-of-pocket some \$1,200.00 because of Schaeffer's actions.

ISSUE TO BE DECIDED

Is it permissible to withhold wages owing to an employee to set-off against a loss caused to the employer by an employee ?

ANALYSIS

This appeal raises an issue discussed by this Tribunal before. There may well seem to be an inequity or unfairness in requiring an employer to pay wages to an employee who has caused them financial loss or even stolen money from them: *Park Hotel (Edmonton) Ltd* BC EST#D539/99; *445864 BC Inc.* BC EST #D329/99. However, the Tribunal has consistently decided that the obligation to pay wages is statutory and neither the Director nor the Tribunal has the discretion to withhold wages legitimately owing to an employee: *566264 BC Ltd.* BC EST #D531/99.

The wages owing must be paid as required by the *Act* and the employer must look to other remedies to recover money allegedly owed by the employee. The employer may, for example, seek restitution in the criminal courts or pursue a remedy in civil court. There is no jurisdiction in the *Act* to grant the remedy sought by the employer in this case. Therefore the Determination must be confirmed.

ORDER

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

John M. Orr
Adjudicator
Employment Standards Tribunal