Employment Standards TRIBUNAL

An appeal

- by -

Catt Steel Services Ltd

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: David B. Stevenson

FILE No.: 2001/36

DATE OF DECISION: May 3, 2001

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the *"Act"*) brought by CATT Steel Services Ltd. ("CATT") of a Determination, ER #082-702, dated November 30, 2000, by a delegate of the Director of Employment Standards (the "delegate"). The Determination concluded that CATT had contravened Section 3(2) of the *Skills Development and Fair Wage Regulation* (*"SDFWR"*) and ordered CATT to cease contravening and to comply with the requirements of the *Act* and the *SDFWR* and to pay an amount of $7,041.96.

CATT says the Determination does not fairly address the cost to CATT of administering the medical coverage provided to its employees. The Director had taken the view that such cost was a cost of doing business which, pursuant to Part 3, Section 21(2) of the *Act*, could not passed on to the employees.

The Tribunal has decided an oral hearing is not required in order to address the issue raised in this appeal.

ISSUE

The issue in this appeal is whether the conclusion in the Determination, that the cost of administering medical coverage for its employees was a cost of doing business which, pursuant to Section 21(2) of the *Act*, CATT was not allowed to pass on to its employees, was wrong

FACTS

CATT works in the structural steel component of the construction industry. The complainants worked during the period from June 7, 1997 to November 21, 1998 as ironworkers, welders and labourers on work sites governed by the *Skills Development and Fair Wage Act* and the *SDFWR*. CATT was providing the complainants with medical coverage. The medical plan costs, as well as the costs of other benefits, were properly deducted from the benefits portion of the complainants' minimum fair wage. However, CATT also retained part of the benefits portion of the complainants' minimum fair wage to defer the costs to CATT of administering the medical coverage. The Director concluded the retention of these administrative costs was prohibited by Section 21(2) of the *Act* and that Section 3(2) of the *SDFWR* required the amount be paid to the complainants.

The Determination also notes the following:

> Evidence to support the employer's position that the employees have received more than which they are entitled has not been produced. Bills accounting for the direct cost to the employer for administration have not been provided.

ARGUMENT AND ANALYSIS

The relevant statutory provisions are found in Section 1, definition of benefits, and Section 3(2) of the *SDFWR*, which state:

1 In this regulation:

> **"benefits"** includes vacation pay, general holiday pay, sick leave, construction industry trust funds, medicare premiums, group life insurance, dental insurance, extended health benefits, long term disability insurance and employer contributions to pension plans other than the Canada Pension Plan, but does not include
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> (a) employer contributions to the Unemployment Insurance Commission, the Canada Pension Plan and the Workers Compensation Board, or
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> (b) allowances for dirty pay, danger pay, first aid pay, shift differentials, overtime, standby, call-out, travel allowances, room and board allowances or other allowances provided to a worker.

3(2) If the employer is providing benefits less than the amount required by the appropriate Schedule, the difference between the value of the benefits provided and the amount required by the Schedule must be

> (a) paid as part of the hourly rate, or
>
> (b) clearly set out in the employee's pay statement and the employer's records as a benefit top-up.

and in Section 21(2) of the *Act*, which states:

21(2) An employer must not require an employee to pay any of the employer's business costs except as permitted by the regulations.

In its appeal, CATT provided several reasons for disagreeing with the decision of the Director. The following comments were included in those reasons:

> CATT Steel provided the medical coverage to the employees through the best and most economical sources that they had available to them. The employees medical coverage included not only their basic BC Med but also included extended medical, dental, eye care and long term disability. . . .
>
> In order to put together the quality of coverage that was provided we had to administrate the Medical Coverage ourselves. We could have had others do the work however the expenses would have been much greater and therefore we would not have been able to provide the coverage that the employees were wanting. We found that we could administrate the coverages much more efficient and therefore less costly than that of someone like Canada Life and therefore we chose to administrate the fund ourselves . . .

CATT goes on to note that the administration of the medical plans was done independently of the payroll and was not part of the cost of doing payroll. CATT also stated that their estimate of the cost to the employer of administrating the medical plans was approximately $.76 an hour.

CATT summarized their appeal by noting they could have paid another company to administer the medical plans as part of the total cost of the benefit and argued that their position should not be viewed differently because they chose to administer the medical plans themselves.

In reply, the Director argued that the evidence and the assertions of fact in the appeal submission from CATT, support a conclusion that the cost of administering the medical plans was a business cost to CATT and the *Act*, in Section 21(2), says that an employee must not be required to pay such costs. The $4.00 an hour from which CATT's administrative costs were recovered was wages under the *SDFWR*. CATT was required to add the difference between the value of the medical and other benefits provided to the employees and the $4.00 an hour required to be paid by the applicable Schedule to the employees' hourly rate and pay it to them as a benefit top-up.

While I have some sympathy for CATT in this case, their appeal must be dismissed. The effect of the legislation is, in my view, inescapable. CATT consciously and voluntarily assumed the cost of administering the medical coverage. Those administration costs are clearly a "business cost" in the sense contemplated by Section 21(2) of the *Act*. Such costs fall into exactly the same category as costs associated with payroll administration, bookkeeping and accounting for the business. The *Act* does not allow CATT to require the employees to pay the cost of administering the medical coverage. Section 3(2) of the *SDFWR* is also clear and the Determination, in the circumstances, correctly concluded the complainants should have received the difference between the value of the benefits provided and the $4.00 and hour required by the applicable Schedule to be added to their hourly rate and paid as a benefit top-up.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination #082-702, dated November 30, 2000, be confirmed in the amount of $7,041.96, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David M. Stevenson
Adjudicator
Employment Standards Tribunal