

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-

Westminster Chevrolet Geo Oldsmobile Ltd.

(“Westminster Chevrolet”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR:	Kenneth Wm. Thornicroft
FILE No.:	97/79 and 97/80
DATE OF HEARING:	May 21st, 1997
DATE OF DECISION:	May 26th, 1997

DECISION

APPEARANCES

Gordon Valente for Westminster Chevrolet Geo Oldsmobile Ltd.

Leon Brichon on his own behalf

Joanne Kembel for the Director of Employment Standards

OVERVIEW

This is an appeal filed by Gordon Valente on behalf of Westminster Chevrolet Geo Oldsmobile Ltd. (“Westminster Chevrolet” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from two Determinations issued by the Director of Employment Standards (the “Director”) both under File No. 23337 and dated January 15th, 1997.

In the first Determination, the Director determined that Westminster Chevrolet owed its former employee, Leon Brichon (“Brichon”), the sum of \$1,652.64. This particular Determination (which I shall refer to as the “Wage Determination”) was issued, primarily, as a result of certain deductions made as against Brichon’s regular wages.

The second Determination was a \$NIL penalty Determination issued by reason of the employer’s unauthorized deduction from Brichon’s wages (I shall refer to this Determination as the “Penalty Determination”).

The appeal hearing in this matter was held in Vancouver at the Tribunal’s offices on May 21st, 1997 at which time I heard submissions from Mr. Gordon Valente on behalf of the employer, Mr. Brichon on his own behalf and from Ms. Kembel on behalf of the Director.

FACTS

Brichon was formerly the manager of the employer’s “fleet department”, although throughout most of his tenure with Westminster Chevrolet, Brichon was the fleet department’s sole employee. Brichon was paid on a salary (\$2,000 per month) plus commission (30% of the fleet department’s gross profits) basis. Brichon was employed by Westminster Chevrolet from the fall of 1991 to the spring of 1996. In the summer and fall of 1995, the employer deducted certain monies from Brichon’s regular wages.

The first deduction stems from an inspection report “signed off” by Brichon in which an incoming vehicle was received in good order even though there was some damage to the vehicle. The costs incurred to repair the vehicle--approximately \$900--were deducted from Brichon’s wages.

The second deduction stems from a purchase order (eight vehicles) received from the Delta Police Department. The employer alleges that Brichon quoted a price to the Delta Police Department that fell below the actual dealer cost of the vehicles (to the extent of \$275 per vehicle). This loss was similarly deducted, over a course of months, from Brichon’s wages.

The \$NIL Penalty Determination was issued as a result of the allegedly unauthorized payroll deductions previously referred to.

I propose to deal with each of the two Determinations in turn.

ANALYSIS

The Wage Determination

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.

Whether or not Westminster Chevrolet is entitled to claim against Brichon for reimbursement for the losses that it says it sustained as a result of his negligence or other default [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 the employer from deducting these claims directly from Brichon’s wages.

The Section 21(1) prohibition regarding wage deductions applies even if Brichon, impliedly or expressly, 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 Westminster Chevrolet wishes to pursue Brichon for reimbursement, it must do so by way of a separate civil action; Westminster Chevrolet was not entitled to engage in a form of “self-help” by simply deducting these claims from Brichon’s wages.

During the appeal hearing Ms. Kembel conceded that the “Calculation Sheet” appended to the Wage Determination contained an error in that the employer was not given full credit for a particular wage payment made to Brichon (the Director only credited the net, rather than the gross, amount of the cheque in question). My final order will reflect the appropriate calculation adjustment as agreed between the parties at the hearing.

The Penalty Determination

The Penalty Determination apparently was issued as a result of the unauthorized deductions from Brichon’s wages to which I have already referred. However, one cannot determine, by reading the Penalty Determination itself, precisely why the Determination was issued. Although there is a reference to section 29 of the “*Employment Standards Regulation*”, it should be noted that this particular section encompasses a wide variety of individual contraventions.

The final paragraph of the Penalty Determination reads as follows:

Determination

I find that Westminster Chevrolet Geo Oldsmobile Ltd. has contravened List specified provisions of the Employment Standards Act or the Employment Standards Regulation.

In my view, a penalty determination, being in the nature of a quasi-criminal proceeding, ought to clearly indicate, *on its face*, the precise reason why the determination is being issued so that a party who receives the penalty determination will have no doubt about the nature of the allegation that has been made against them.

During the course of the Appeal Hearing Ms. Kembel advised that the Director intended to withdraw this particular Penalty Determination and gave the Tribunal an undertaking to that effect.

ORDER

Pursuant to section 115 of the *Act*, I order that the Wage Determination in this matter, dated January 15th, 1997 and issued under File No. 23337, be varied in the amount of \$1,421.20 together with interest to be calculated by the Director in accordance with section 88 of the *Act*.

The Penalty Determination in this matter, also issued under File No. 23337 and dated January 15th, 1997, is withdrawn, by consent.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal