

An appeal

- by -

Nechako Reforestation Services Ltd.
(“Nechako”)

- 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.: 2002/074

DATE OF DECISION: May 24, 2002

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Nechako Reforestation Services Ltd. (“Nechako”) of a Determination that was issued on January 30, 2002 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Nechako had contravened Part 3, Section 21 of the Act in respect of the employment of Scott Daxon (“Daxon”) and ordered Nechako to cease contravening and to comply with the *Act* and to pay an amount of \$590.78.

Nechako says the Determination is wrong and Daxon was paid all the money he was owed.

The Tribunal has decided an oral hearing is not necessary in order to decide this appeal.

ISSUE

The issue in this appeal is whether Nechako has shown the Determination was wrong because Nechako had, in fact, paid Daxon more money than they were required to pay under the *Act*.

FACTS

Nechako is a silviculture contracting firm. Daxon worked for Nechako from May 1, 2000 to July 6, 2000 as a foreman on a commission (piece rate) basis. Among other things, the Determination found that Nechako had contravened Section 21 of the Act by deducting an amount of \$535.00 from Daxon’s wages as part of the cost of repairing a company vehicle which had been used by Daxon during his employment.

ARGUMENT AND ANALYSIS

As I perceive their argument, Nechako says that because Daxon received a camp rebate and a performance related bonus, totalling \$1,397.35, he still received over \$600.00 more than Nechako was obliged to pay him, even after the deduction for vehicle repairs.

The relevant portion of Section 21 reads:

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

There is no issue here that the deduction was one permitted by the *Employment Standards Regulation*. It was not. Nor is there any other factual assertion supporting this appeal. There is no dispute by Nechako that Daxon was required by them to pay part of the cost of repairs on a company vehicle. That is clearly prohibited by Section 21 of the *Act*. What Nechako paid to Daxon otherwise is not relevant to the central question in dispute. The *Act* does not contemplate the possibility of a set-off under Section 21 of other amounts paid to employees - it is a blanket prohibition against employees being required to pay their employer’s business costs unless that result is permitted by the *Regulation*.

I agree with the Determination, that the provisions of the *Act* are quite clear and apply to the facts of this case.

Nechako has not met the burden of demonstrating the Determination is wrong and the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated January 30, 2002 be confirmed in the amount of \$590.78, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal