

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 -

The Mega Hair Group Inc.
("Mega Hair")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 97/264

DATE OF DECISION: May 29, 1997

DECISION

OVERVIEW

This is an appeal by The Mega Hair Group Inc. (“Mega Hair”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination which was issued on March 25, 1997 by a delegate of the Director of Employment Standards (the “Director”). The Determination found that Mega Hair was required to pay \$917.16 (including interest) on account of two contraventions of the *Act* (Section-21 Deductions and Section-40 Overtime Wages)

Mega Hair does not dispute the finding that it is required to pay overtime wages to Beverly Major. However, the appeal argues that the Determination is wrong when it finds that Mega Hair made unauthorized deductions from Ms. Major’s wages.

ISSUE IN DISPUTE

Did Mega Hair make deductions from Beverly Major’s wages, contrary to Section 21 of the *Act*?

FACTS

The Determination found that Beverly Major is entitled to \$36.00 in unpaid overtime wages and reimbursement of deductions totalling \$871.22, plus interest.

An explanation of those findings was included in a letter attached to the Determination. On the issue of deductions from Ms. Major’s earnings, the letter states:

“... the *Employment Standards Act* ... is quite clear that the supplies deductions are not legal.”

The central reason for Mega Hair’s appeal is that the Determination “... assumes that deductions made from Ms. Major’s wages were unauthorized under Section 21 of the *Employment Standards Act*. These deductions were not unauthorized and not in contravention of the *Act* as the deductions were in fact, payment for products purchased by Ms. Major from the company”.

This submission by Mega Hair is supported by the following statement:

The facts are that Ms. Major ordered, accepted and was delivered products from the company and these were paid for through a deduction from her pay cheque. These amounts are comparable to a payroll advance in that they are payment for products given to the employee at a cost to the employer in advance of payment. The company did not require Ms. Major to use these products in her work. All products necessary for Ms. Major to do her work were supplied by the company including shampoo, conditioner, permanents, colours, developers and any other products necessary to do her work. Products selected by Ms. Major were by her choice and although she did have the option to use them in her work, it was not a requirement of her employment. In fact, the products selected most often were for her personal use and in most cases, they were taken home by her. Once the products were delivered, they became Ms. Major's property and the use of the products was totally her option. As such, we believe that the deductions were totally legal.

ANALYSIS

Section 21 of the *Act* states:

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.*
- (2) *An employer must not require an employee to pay any of the employer's business costs except as permitted by the regulations.*
- (3) *Money required to be paid contrary to subsection (2) is deemed to be wages, whether or not the money is paid out of an employee's gratuities, and this Act applies to the recovery of those wages.*

Mega Hair submits that "...the law does not state that money advanced to an employee cannot be collected without a required signature. Nor does the law state that an employer cannot collect for products given to an employee upon their request as an advancement.

With respect, I disagree. Section 21(1) of the *Act* prohibits an employer from making deductions from an employee's wages **for any purpose** except as permitted by enacted legislation.

Section 22(4) of the *Act* allows an employer to “...honour an employee’s written assignment of wages to meet a credit obligation.”

Mega Hair has not submitted any evidence to the Tribunal to establish that Ms. Major had given a written assignment to meet a credit obligation.

For all of these reasons, I find that the Determination should be confirmed.

ORDER

I order, under Section 115 of the *Act*, that the Determination be confirmed

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC/da