

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

The Karalot Daycare Society
(“Karalot”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Lorne D. Collingwood

FILE NO.: 96/297

DATE OF HEARING: AUGUST 21, 1996

DATE OF DECISION: AUGUST 22, 1996

DECISION

OVERVIEW

The appeal is by Karalot Daycare Society ("Karalot") pursuant to Section 112 of the *Employment Standards Act* ("the Act") against Determination # CDET 002019 issued by the Director of Employment Standards (the "Director") on April 19, 1996. The Determination, issued as a result of a complaint by Ursula L. Clark ("Clark"), a former employee of Karalot, finds that Karalot contravened Section 21 of the Act in deducting \$53.50 from Clark's pay, the cost of a first aid course.

APPEARANCES

Ursula L. Clark	On her own behalf
Wayne Mackie	For the Director

FACTS

Clark was employed by Karalot from February 6, 1995 to March 8, 1996. At the time of her leaving Karalot she was the Manager of the day-care.

Clark's complaint to the Employment Standards Branch was for wages owing, a substantial amount, and \$53.50, the cost of a first aid course taken at the start of her employment but deducted from her pay at the time of her leaving Karalot. The wage issue was settled by the Director's Delegate, Wayne Mackie, in discussions with the parties. The matter of the deduction for the first aid course was not and in Determination # CDET 002019 it was found to be contrary to Section 21 of the Act. Including interest, Clark was found to be owed \$53.95.

Karalot appealed the ruling and a hearing was set for August 21, 1996. Karalot was notified of the hearing by letter dated July 26, 1996 but did not attend.

Tribunal procedure calls for the Adjudicator to contact the Registrar of the Tribunal, should the appellant not attend its hearing. The Registrar has informed me that Karalot made an 'eleventh hour' request for postponement of the hearing, the request coming from Karen Summers ("Summers") of Karalot. I am further told that, unsatisfied with the reason for the request, Summers was told by the Registrar that the hearing would go ahead as scheduled.

ISSUES TO BE DECIDED

Is the setting of a new date for a hearing in order? If not, Is there reason to vary or cancel the Determination, given the submissions of the parties?

ANALYSIS

On being denied the requested postponement, Karalot chose not to attend its hearing. Karalot may well have abandoned its appeal or it may be that it chose not to present its case orally. Either way, I see no reason to order a new hearing now. Karalot was unable to offer sufficient reason for the granting of a postponement at the 'eleventh hour', weeks after the hearing had been set, I trust the Registrar's judgement in that regard. And clearly, unless there is very good reason, the Tribunal cannot grant last minute requests to reschedule hearings if it is to function efficiently and if appeals are to be handled in an orderly fashion.

It being possible that the appeal has not been abandoned, I now turn to the matter of the appeal.

In the reason schedule of the Determination, the Director's Delegate found that in deducting money for a first aid course, Karalot violated Section 21 (1) of the *Act*, and I quote, "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" (my emphasis). The Determination then proceeds to deal with wage assignments permitted by the *Act*, the Director's Delegate concluding that the deduction is not a "credit obligation" as allowed by section 22 (4) of the *Act*. That section states, "An employer may honour an employee's written assignment of wages to meet a credit obligation" (emphasis added).

On reading the appeal and the documents that accompanied it, I am first struck by the fact that at issue is a mere \$53.95. On reading further, I find that Karalot's submission does not in any way refer to the substance of the Determination. There is a minor reference to there being an agreement of sort, that the employee would bear the cost of the first aid course should she not work at least a year for Karalot, but beyond that the submission is nothing more than an attempt to assassinate the character of Clark. That when combined with the amount involved, leads me think that the Karalot appeal deserves to be dismissed, as section 114 allows, on the basis that it is both vexatious and trivial. That section provides, and I quote, "(1) The tribunal may dismiss and appeal without a hearing of any kind if satisfied after examining the request that ... (c) the appeal is frivolous, vexatious or trivial or is not brought in good faith."

The appellant has failed to show how the deduction is allowed by the *Act*. There is no written assignment of wages that would allow for the cost of the first aid course to be deducted from Clark's pay, that is the evidence before me. I agree with the Determination, \$53.95 is owed Clark.

ORDER

I order, pursuant to Section 115 of the *Act*, that Determination # CDET 002019 be confirmed.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal

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