

An appeal

- by -

Seton Timber Company Ltd.
(the "Employer")

- 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: Ib S. Petersen

FILE No.: 2001/74

DATE OF DECISION: May 16, 2001

DECISION

SUBMISSIONS

Mr. James Freck	on behalf of the Employer
Mr. William Garceau	on behalf of himself
Mr. Ken Copeland	On behalf of the Director

ANALYSIS AND DECISION

This arises out of a referral back to the Director of my decision in *Seton Timber Company Ltd.*, BCEST #517/00, with respect to two issues:

1. the amounts paid to Garceau, taking into account expenses incurred and paid by him on behalf of the Employer's business; and
2. the amount of wages owed to Garceau based on the minimum wages provided for in the *Act*.

With respect to the first issue, the delegate's initial report, dated January 24, 2001, explains that between July and November 1998, Garceau was paid \$11,000. Of this amount, \$5,000 was on account of a loan to the Freeks, leaving \$6,000 as the wages paid. This is based on information from the Employer's accountant detailing the cheques given to Garceau during that period. The delegate accepts that the \$6,000 was paid on account of wages.

In a submission to the Tribunal, the Employer states that Garceau was given additional cheques, missed by the accountant, March 13, 1998 for \$400, June 26, 1998 for \$1,000 and August 14 for \$1,500, *i.e.*, an additional \$2,900. The Employer also takes issue with my decision, in the circumstances, not to allow it to deduct for room and board. I am not going to deal with this latter aspect. If the Employer disagrees with the original decision, the proper approach for the Employer is to apply for reconsideration.

With respect to the second issue, the delegate's initial report calculates that the amount of wages for the period January 3 to August 17, 1998 as follows:

1840 hours @ \$7.15	\$13,156.00
Vacation pay	\$ 526.24
Total	\$13,682.24
Less wages paid	\$ 6,000.00
Lien on truck	\$ 1,830.96
Total wages outstanding	\$ 5,851.28
Accrued interest	<u>\$ 652.26</u>
Total amount outstanding	\$ 6,503.54

Garceau takes issue with my decision that he is only entitled to minimum wages. He says that the Employer acknowledged that he was entitled to \$20.00 per hour. I do not intend to deal with this aspect. If Garceau disagrees with my original decision, the proper avenue is through an application for reconsideration.

Garceau also says that the amount paid to Inland Kenworth was not paid on his behalf. He says that the truck was not registered to him and he told the Employer not to pay it. He also says that the Employer should not be able to deduct money from his wages without his permission. The Employer suggests that if the lien was paid improperly, it is up to Garceau to recover the amount from Inland Kenworth.

In his second report to the Tribunal, dated March 13, 2001, responding to the submissions of the parties, the delegate notes that there is only evidence that one of the cheques (June 26, 1998 for \$1,000) was cashed by Garceau. There is no evidence that the two other cheques were received by Garceau.

In his submission to the Tribunal, dated March 27, 2001, Garceau states that the March 13, 1998 cheque for \$400 was on account of a loan to the Employer. The Employer does not dispute this. In the result, I am not going to take this amount into account in assessing the amount of wages Garceau is entitled to. I am not satisfied that this amount was paid on account of wages.

Garceau does not specifically address the June 26 and August 14, 1998 cheques, for a total of \$2,500, *i.e.* whether they were on account of expenses. Garceau does say that some of the cheques were not for wages but for expenses incurred by him on behalf of the Employer. The Employer does not directly contradict this assertion. On the other hand, an earlier submission from the Employer acknowledges that Garceau paid almost \$2,400 worth of expenses on behalf of the Employer. The amount of expenses paid are probably higher. In any event, and in the result, I am not going to take this amount into account in assessing the amount of wages Garceau is entitled to. I am not satisfied that the \$2,500 was paid on account of wages. In the circumstances, it is more likely that these amounts were paid on account of expenses paid by Garceau.

I have one misgiving about the delegate's initial report. I am not satisfied that the amount stated to have been paid on behalf of Garceau on account of the lien to Inland Kenworth is properly deducted from the amount he is entitled to. Section 21(1) of the *Act* proscribes deductions from wages for any purpose not permitted by the *Act* or any other provincial or federal act. As well, Section 22(4) of the *Act* provides that an employer may honour an employee's written assignment of wages to meet a credit obligation. That is clearly not the case here. Any claim the Employer may have to this amount may be settled in the civil courts. In short, the delegate erred in deducting this amount from the amount to which Garceau is entitled.

In the result, I am going to amend the delegate's calculation of the wages to which Garceau is entitled. The amount of \$1,830.96 may not be deducted from the amount of wages. The amount of outstanding wages is, in my view, \$7,682.24 plus the applicable interest.

ORDER

I order that the Determination dated January 24, 2001 be varied to show William Garceau is owed \$7682.24 by Seton Timber Company Ltd., plus interest calculated in accordance with Section 88 of the *Act*.

IB S. PETERSEN

Ib S. Petersen
Adjudicator
Employment Standards Tribunal