Employment Standards TRIBUNAL

An appeal

- by -

General Labellers Ltd.

- 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: John M. Orr

FILE No.: 2002/172

DATE OF DECISION: June 6, 2002

DECISION

OVERVIEW

This is an appeal by General Labellers Ltd. ("GL") pursuant to Section 112 of the *Employment Standards Act* (the "*Act*") from a Determination dated March 7, 2002 by the Director of Employment Standards (the "Director").

In the exercise of its authority under section 107 of the *Act* the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

Kevin Moser ("Moser") was employed at the business operated by GL. During the course of his employment Moser was driving a forklift truck carrying some wooden pallets. He dropped the pallets against the private vehicle of another employee. Moser paid for the damage to the private vehicle but submitted that he should not have had to pay for the damage and that GL should have paid for it or applied for insurance coverage for the damage.

The Director determined that the damage was a business cost and that an employee is not required to pay for a business cost as per section 21 of the Act. GL appeals on the grounds that the payment made for the damage to the employee's vehicle was a private arrangment made between the employees and that it was not a business expense.

ISSUES

The issue in this case is whether the employee was required to pay a business expense contrary to section 21 of the *Act*.

ANALYSIS

The essential facts in this matter are that Moser was operating his employer's forklift truck in the performance of his employment duties. He operated the truck carelessly and dropped the wooden pallets against the personal vehicle of another employee. Moser admitted his fault and immediately offered to pay for the damage. The other employee did not make a claim against Moser or against GL as the owner of the forklift. The employer did not become involved in the matter until Moser made a claim to the Employment Standards Branch for reimbursement of the money he paid for the damage to the vehicle.

Section 21 of the Act provides:

> Deductions
>
> 21 (1) Except as permitted or required by this Act or 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.

The Director also refers to section 4 as prohibiting any agreement to waive the requirements of the *Act*.

> Requirements of this Act cannot be waived
>
> 4. The requirements of this Act or the regulations are minimum requirements, and an agreement to waive any of those requirements is of no effect, subject to sections 43, 49, 61 and 69.

The Director concluded that the damage done by Moser to the other employee's vehicle was a business expense and that therefore the employer was in breach of section 21 and liable to reimburse the employee.

This analysis is overly simple. Section 21 prohibits an employer from withholding, deducting or requiring payment. However there is no evidence presented in, or with, the Determination to establish that the employer withheld, deducted, or required payment of the damages caused by Moser's carelessness. Moser volunteered immediately to compensate his co-worker for the damage done. Subsequently, he made enquiries as to whether there was any insurance coverage available. There was none, as the corporate insurance had a deductible higher than the costs involved.

It is possible that the repair costs could have become a business cost. If the injured employee had sued Moser and added GL as a party vicariously liable as the owner of the forklift and if the suit were successful there may have been a business cost to the employer. The outcome of such a suit is speculative. It is also mere speculation to suggest that GL would have then required the employee to pay that business cost. There was no evidence of the employer's policy in regard to damage occurring to private vehicles parked on the employer's premises. The fact is that no business cost ever actually crystallised.

In this case there are several reasons why section 21 did not apply. The repair of the employee's vehicle never became a business cost to the employer. The employer never "required" Moser to pay for the repair. The employer never withheld, deducted or required payment out of Moser's wages.

Section 4 did not apply because no requirement of the *Act* or regulations was waived by any party. There is no requirement in the *Act* or regulation for the employer to pay for the damage to the employee's private vehicle. As the repair never became a business expense, the agreement by Moser to pay for the repair was not an agreement to waive a provision of the legislation.

As the employer did not require Moser to pay for the repair and as it was never established that the repair was a business cost there is no basis upon which GL could be ordered to reimburse the employee. Therefore the determination must be cancelled.

ORDER

I order, under section 115 of the *Act*, that the Determination dated March 7, 2002 is cancelled.

John M. Orr
Adjudicator
Employment Standards Tribunal