

An appeal

- by -

Bruce Hedmann  
("Hedmann")

- 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:** Cindy J. Lombard

**FILE No.:** 2001/842

**DATE OF HEARING:** April 5, 2002

**DATE OF DECISION:** June 6, 2002

## DECISION

### APPEARANCES:

|                         |                                                       |
|-------------------------|-------------------------------------------------------|
| Bruce Hedman, Appellant | on his own behalf.                                    |
| Tracy Brice, Counsel    | on behalf of OK Northern Computer Inc. and Jim Condon |
| Rob Turner              | on behalf of the Director of Employment Standards     |

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Bruce Hedmann (“Hedmann”) of a Determination issued on November 7, 2001 (the “Determination”) by a Delegate of the Director of Employment Standards (the “Director”).

The Determination found that Hedmann’s wages were not subject to unauthorized deductions to pay the wages of a sales assistant and therefore the *Act* had not been contravened.

### ISSUE TO BE DECIDED

Were deductions made by the Respondent employer, OK Northern Computers, from the Appellant Hedmann’s wages to pay the wages of a sales assistant contrary to Section 21 of the *Act*?

### FACTS

OK Northern Computers sells and services computer equipment.

Hedmann was employed by OK Northern Computers from April 29, 1986, until January 31, 2001, as a sales representative.

Hedmann’s wages were pure commission. He worked in the education department, which also employed a sales assistant (“Doris”).

Hedmann left the employment of Northern Computer when the employer advised that a change in his commission structure with which Hedman was not happy would be put into effect on November 6, 2000. It was not until Hedmann applied for Employment Insurance Benefits where a clerk in looking at a pay receipt (e.g. see Schedule 1 annexed hereto – Pay Receipt dated January 28, 2001) pointed out the employer may have made an unauthorized deduction, that Hedmann made a complaint under the *Act*.

#### *According to the Appellant/Hedman*

All of Hedman’s sales were recorded on a commission reporting form. Any split was noted and then Hedman’s commissions were calculated. Doris’ wage was deducted from his commissions and as such

was an unauthorized deduction from his wages to pay a business expense of the employer/respondent contrary to Section 21 of the *Act*

***According to the Respondent/Employer OK Northern Computers***

In fact the sales assistant, Doris' wages were paid from "gross profit" not from Hedman's wages, i.e. his commissions.

The internal procedure was as follows:

1. Gross profit for the Education Department was calculated.
2. Commissions were then calculated.
3. Commissions were then split as between Hedman and Doris in accordance with the formula in the Commission contract with Hedman.
4. Hedman's respective share of commissions was entered in his "wage" for payroll and source deductions were then made.

Hedman's contract erroneously read:

- "15. Sales Assistant Option
- a) ½ of the wages paid to the sales assistant will be deducted from the gross commissions of the Employee for the total time the Sales Assistant has spent working for the Employee."

when it should have read:

- a) ½ of the wages of the Sales Assistant will be deducted from the gross commissions of the combined efforts of both the Employee and the Sales Assistant.

**ANALYSIS**

Section 21 of the *Act* provides as follows:

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 out 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 to the recovery of those wages.

Section 8 of the *Interpretation Act* provides:

“Every enactment must be construed as being remedial, and must be given such full ease and liberal construction and interpretation as best assures the attainment of its objects.”

The object of Section 21 of the *Act* is to protect employees from unauthorized deductions from their wages. Looking at the facts of this case as a whole, we have concluded that the wage of the assistant was not deducted from Hedman’s wages, rather they were in fact deducted from the total gross commissions generated in the education department by Hedman and the assistant.

On Hedman’s pay receipt (see Schedule 1), the split on gross “commissions” is allocated as between Hedman and the assistant, Doris, to arrive at Hedman’s share of the gross commissions or his “gross pay” (i.e. \$2,420.78 plus \$236.78 holiday pay for “gross pay” of \$2,657.50). Source deductions for Hedman are then taken from the “gross pay” of Hedman and not from the total commission.

For the foregoing reasons the *Act* has not been contravened and the Appeal is therefore dismissed.

## **ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated November 7, 2001 be confirmed.

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**Cindy J. Lombard**  
**Adjudicator**  
**Employment Standards Tribunal**