

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 -

Aluminex Extrusions Limited
("Aluminex")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Lorna Pawluk

FILE NO.: 98/256

DATE OF DECISION: July 30, 1998

DECISION

OVERVIEW

This is an appeal by Aluminex Extrusions Limited ("Aluminex" or the "employer") under Section 112 of the *Employment Standards Act* (the "Act") from a Determination dated March 31, 1998 by the Director of Employment Standards ("the Director"). Aluminex argues that it was entitled to deduct \$1200.00 from the final paycheque made to Anna Stapleton ("Stapleton" or the employee").

ISSUE TO BE DECIDED

The issue is whether under section 21 of the *Act*, Aluminex was entitled to withhold \$400.00 from Stapleton's final paycheque.

FACTS

Stapleton filed a complaint with the Employment Standards Branch, claiming that Aluminex had wrongfully made two deductions made from her final paycheque. One deduction was for \$30.00 and the other was \$1200 for three months worth of use for a company vehicle. Only the \$1200 deduction is at issue here. The Director's Delegate found a breach of section 21(1) since the employer provided no documentation to show that the employee had agreed to be responsible for the costs of driving a company vehicle and the employee denied having agreed to the deduction. The Director's Delegate concluded: "In the absence of any written agreement, it must be considered unauthorized."

Aluminex appeals, arguing that Stapleton agreed that the company vehicle was used by sale people only and was provided to her for July and August as a perk since the car was not being used by anyone else. As a new salesman was starting in September, she knew the car would have to be returned unless she assumed the lease or bought the car. They added that Mr. Cameron, Aluminex president, was negotiating a purchase price with Stapleton that "would include equivalent lease payments for the time since September or if a price wasn't finalized Anna would assume the lease payments." They said that she was allowed to use the car while they were finalizing the purchase negotiations. They also seek further deduction of \$400.00 in advances made to her.

In response, Stapleton denies agreeing to assume the costs of the vehicle. She was given use of the car for company business. She acknowledges that she had agreed to purchase the vehicle but specifically denies agreeing to assume the costs, or to allow Ms Lopez to deduct the costs from her final paycheque.

ANALYSIS

Section 21 of the *Act* prohibits an employer from making deductions from wages owing an employee:

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.

- (1) An employer must not require an employee to pay any of the employer's business costs except as permitted by the regulations.
- (2) 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

Section 22 outlines assignments which must be honoured by an employer, including union dues, certain charitable or pension contributions, certain family maintenance obligations and other deductions specifically authorized by the Director. None of them apply here; the sums withheld from Stapleton's paycheque related to her use of a company vehicle. Thus, the sums were improperly deducted from Stapleton's last paycheque and thus Aluminex was properly ordered to return to those sums to her.

The Delegate concluded that Anna Stapleton had not agreed to these deductions and thus ordered Aluminex to repay her for sums incorrectly withheld from her final paycheque. However, I note that under section 4 of the *Act* any agreement by the employee to contract out of the protections in the *Act* is void and thus regardless of whether Stapleton agreed, the employer cannot withhold those sums from her final paycheque. It does not stop the employer from pursuing other civil remedies against the employee but the sums owed cannot be withheld from wages otherwise payable.

I note that the Determination ordered Anna Stapleton to cease contravening sections 21(1) and 58(3) of the *Act*. This was in error and that it to intended to apply to Aluminex. Finally, the employer's request for the return of \$400.00 in cash advances does not flow from the Determination under appeal here and thus the Tribunal is without jurisdiction to consider it.

ORDER

Pursuant to section 115 of the *Act*, I vary the Determination dated March 31, 1998.

Lorna Pawluk
Adjudicator
Employment Standards Tribunal