

**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 -

A.E. Bradford Trucking Ltd.

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	Ian Lawson
<b>FILE NO.:</b>	96/247
<b>DATE OF HEARING:</b>	August 16, 1996
<b>DATE OF DECISION:</b>	September 16, 1996

**DECISION**

**APPEARANCES**

For the Appellant	Shawn A. Bradford
The Respondent	Gordon Goheen
For the Director of Employment Standards	John Dafoe

**OVERVIEW**

This is an appeal by A.E. Bradford Trucking Ltd. pursuant to Section 112 of the *Employment Standards Act* (the "Act"). The appeal is from Determination No. CDET 001689, issued by John Dafoe as a delegate of the Director of Employment Standards on March 21, 1996.

The Determination required the Appellant to pay to its employee Gordon Goheen wages and vacation pay plus interest in the total amount of \$3,265.19. The Appellant filed an appeal on or about April 2, 1996. An oral hearing was held at Smithers, B.C. on August 16, 1996.

**FACTS**

Gordon Goheen was employed as a truck driver by the Appellant between December 12, 1992 and July 28, 1995. He was paid a monthly salary of \$3,314.68 plus \$132.59 in vacation pay per month. He alleges that the Appellant failed to pay all of his wages in the final month of his employment, and that the Appellant improperly deducted amounts from his wages on 8 occasions.

The Appellant acknowledges that for 6 pay periods the amount of \$150.00 was deducted from Mr. Goheen's cheque on account of damage to a B.C. Telephone Company line which occurred as a result of Mr. Goheen's alleged negligent driving. Mr. Bradford for the Appellant testified that Mr. Goheen had agreed to these deductions, but admitted that the B.C. Tel bill was sent to his company. Mr. Goheen denies having agreed to the deductions, and testified that Mr. Bradford simply started deducting the payments.

Mr. Goheen also alleges that the Appellant improperly deducted \$100.00 for damage to a stereo radio which occurred in a driving accident. Much debate occurred at the hearing regarding who owned the radio, but there appears to be agreement that this sum was deducted from Mr. Goheen's pay, and that this was done without his consent.

The final improper deduction alleged by Mr. Goheen relates to a suspension from work imposed by the Appellant, apparently as a form of discipline for Mr. Goheen's alleged neglect relating to the accident in which the radio was damaged. The Appellant testified that the suspension was for 5 days, but admitted that this occurred over the July long weekend and that it was probable that Mr. Goheen reported for work as usual on the Tuesday morning following the holiday. Mr. Goheen testified that he was aware he was in trouble for the accident, but he was not aware of a "suspension" in the usual sense of that word. He says he went to work as usual following the accident, but that the Appellant withheld 3 days' pay from his next pay cheque.

The Appellant's calculation of wages for Mr. Goheen during his final month of employment consisted of a pro-rated payment of his monthly salary based on the number of working days in July, and the number of days actually worked by Mr. Goheen. Total wages owing by this method were \$2,386.44. From this amount the Appellant then deducted the 5 day suspension (\$662.90), the amount for the damaged radio (\$100.00), and then recovered an amount alleged to be overpaid vacation pay (\$795.54, discussed in the next paragraph). This left \$828.00 payable to Mr. Goheen, although \$840.75 was actually paid to him, for a reason unknown to the employer.

Regarding the allegedly overpaid vacation pay, Mr. Bradford testified that 4% vacation pay was paid to Mr. Goheen monthly, but that Mr. Goheen had also been granted time off with pay, in error. Mr. Bradford says he brought this error to Mr. Goheen's attention in 1994, and that it was agreed that he would no longer receive the 4% vacation pay for 1995. In error, the 4% continued to be added to Mr. Goheen's monthly pay, to a total of \$795.54.

At the hearing, neither Mr. Goheen nor the Appellant could determine whether Mr. Goheen had been paid vacation pay for 1993, or whether he had also taken paid time off for that year. Mr. Goheen did not object in principle to the Appellant recovering the overpaid vacation pay, provided he had been properly paid vacation pay in 1993. I allowed the parties a further week from the date of hearing to produce whatever additional evidence they might wish to present on this point, and to deliver that evidence to Mr. Dafoe. It was communicated to me by Mr. Dafoe that this matter had been resolved satisfactorily and that the Appellant should be permitted to recover the overpaid vacation pay from Mr. Goheen in the amount of \$795.54.

**ISSUE TO BE DECIDED**

This appeal requires me to decide whether the various deductions from Mr. Goheen's wages were proper and lawful, and whether the Appellant's calculation of wages for the final month of employment was correct.

**ANALYSIS**

The parties dealt at some length in their evidence and argument with the question whether Mr. Goheen was at fault for his driving on the two relevant occasions, whether he had agreed to the B.C. Tel bill being deducted from his pay and whether the Appellant was justified in suspending Mr. Goheen and demanding compensation for damage to the radio. The basic issue, however, is whether the Appellant was allowed to deduct any amounts from Mr. Goheen's pay, regardless of the merit behind the deduction, and regardless whether Mr. Goheen consented to it.

The Determination under appeal implies that the deductions may have been proper if Mr. Goheen had executed a written assignment of his wages. I doubt, however, that even a written assignment would result in the deductions being lawful, if Mr. Goheen now disputes them. Section 21(1) of the *Act* is quite clear:

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.

Section 22 requires employers to honour an employee's written assignment of wages, but in my view the assignments contemplated by that section relate to payment of wages to third parties, and not to the recovery by the employer of amounts alleged to be owing to that employer. In any event, in this case Mr. Goheen did not execute any written assignment in relation to the deductions and so the deductions are *prima facie* unlawful.

I find that Mr. Goheen had not been suspended from work in the normal sense of that term and that the Appellant could not lawfully deduct 5 days pay when Mr. Goheen had reported for work as usual during the month of July, 1995.

With regard to the pro-rated payment of Mr. Goheen's salary for July, 1995, the approach taken by Mr. Dafoe in his Determination is preferable to the Appellant's approach. An employee who is paid a monthly salary should be entitled to pay for the number of days in the month that had transpired by the termination date. As Mr. Goheen worked until July 28, Mr. Dafoe's calculation of pay at 28/31 of his monthly salary is correct.

**ORDER**

After carefully considering the evidence and argument, I find that the Determination made by Mr. Dafoe is correct, save for the issue of vacation pay overpayment, respecting which the parties are in agreement. Pursuant to Section 115 of the *Act*, the Determination No. CDET 001689 is hereby varied by requiring that the sum of \$795.54 be withheld from the amount payable to Mr. Goheen, on account of the overpayment of vacation pay. In all other respects the Determination is confirmed.

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**Ian Lawson**  
**Adjudicator**  
**Employment Standards Tribunal**