

An appeal

- by -

Westcoast Society for Educational Opportunities  
("WSEO")

- 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:**

**FILE No.:**

**DATE OF HEARING:**

**DATE OF DECISION:**

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Westcoast Society for Educational Opportunities (“WSEO”) of a Determination that was issued on March 12, 2002 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that WSEO had contravened Part 3, Section 21 of the *Act* in respect of the employment of Katie Tucker (“Tucker”) and ordered WSEO to cease contravening and to comply with the *Act* and to pay an amount of \$677.30.

WSEO says the Determination is wrong and brings this appeal on two grounds: first, that Tucker was not covered by the *Act* because she was receiving financial assistance through a government sponsored employment program; and second, because she had agreed to pay off the vehicle repairs and was, in any event, responsible for the damage to the vehicles.

### ISSUE

The issue in this appeal is whether WSEO has shown an error in the Determination sufficient to persuade the Tribunal to exercise its authority under Section 115 of the *Act* and cancel it as requested.

### FACTS

The Determination set out the following background information:

Ms. Tucker was employed driving a small tour bus during the period July 2, 2001 until August 31, 2001. Her actual employer is in dispute, being either ECO Tours or the Westcoast Society for Educational Opportunities (“WSEO”). During that period she experienced two motor vehicle accidents which resulted in a cost of \$160.00 and \$500.00 respectively. Following the first accident Mr. Olmstead, who is the president of ECO Tours and the president of WSEO, settled the costs with the owner of the damaged vehicle for \$160.00. He paid this amount to the owner of the damaged vehicle. The second accident which involved a vehicle rented by ECO Tours and signed for by Ms. Tucker incurred a charge of \$500.00 being the insurance deductible amount. Mr. Olmstead paid the rental company this amount. Both amounts were then deducted from Ms. Tucker’s wages.

The Determination found WSEO to be the employer. That conclusion is not appealed. The Determination also acknowledged the position of WSEO that Tucker, having been hired through a federal youth employment program, was not covered by the *Act* but found the *Act* had been contravened and ordered a remedy in her favour. That finding is disputed. There was no written authorization from Tucker to deduct the amounts from her wages.

### ARGUMENT AND ANALYSIS

In this appeal, WSEO reiterates its position that Tucker’s employment was not covered by the *Act*. In reply to that position, the Director says that Tucker was not in receipt of financial assistance from the

federal government nor was there any evidence that any of the government sponsored employment programs referred to in Section 32 of the *Employment Standards Regulation* were in place at WSEO's place of business. WSEO has made no reply to that submission and there is otherwise no evidence on file that Tucker was receiving any assistance under a government sponsored employment program that would cause her to be excluded from the minimum employment protections provided by the *Act*. Bearing in mind that WSEO has the burden in this appeal of showing an error in the Determination, the failure to provide evidence supporting this ground of appeal is fatal. The possibility that WSEO was told by some representative of the Director that Tucker was not covered by the *Act* has no bearing on the validity of this appeal. Comments made by the Director cannot be used by WSEO to bar Tucker from the rights and entitlements she has under the *Act*.

Section 21 of the Act states:

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 any of an employee's wages 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.

There is no suggestion that the deductions from Tucker's wages were permitted or required by the *Act*, or by any other enactment, or that Tucker had authorized in writing such amounts to be deducted. In fact, in the context of the above statutory prohibition, WSEO has not shown any basis supporting its actions. The suggestion that Tucker may have verbally agreed to pay for the damage or that she was at fault for the accidents are legally irrelevant to whether WSEO was allowed to deduct or withhold the amounts from her wages. The *Act* contains no reference to verbal understandings or accepting fault as being exceptions to the general prohibition found in Section 21. As a result, and applying the plain and ordinary words of above provision to the circumstances of this case, WSEO was prohibited from withholding or deducting the costs of the accidents from Tucker's wages.

No error in the Determination has been shown and the appeal is dismissed.

## ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated March 12, 2002 be confirmed in the amount of \$677.30, together with any interest that has accrued pursuant to Section 88 of the *Act*.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**