

An appeal

- by -

Ahead College Inc., formerly known as Ahead Institute of Technology Ltd.
("Ahead")

- 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: Carol L. Roberts

FILE No.: 2002/161

DATE OF HEARING: June 6, 2002

DATE OF DECISION: June 17, 2002

DECISION

APPEARANCES:

Massood Joomratty Kang Abrahams Chahal, Barristers and Solicitors	On behalf of Ahead College
Kuljit Sappal	On his own behalf
Written submissions only	on behalf of the Director of Employment Standards

OVERVIEW

This is an appeal by Ahead College Inc., formerly known as Ahead Institute of Technology Ltd. ("Ahead"), pursuant to Section 112 of the *Employment Standards Act* ("the *Act*"), against a Determination of the Director of Employment Standards ("the Director") issued March 5, 2002. The Director found that Ahead contravened Sections 17(1), 18(1), 58(3) and 63(1) of the *Act* in failing to pay Kuljit Sappal wages, vacation pay and compensation for length of service, and Ordered that Ahead pay \$4,025.00 in wages and interest to the Director on Mr. Sappal's behalf.

ISSUE TO BE DECIDED

Whether the Director erred in determining Mr. Sappal's entitlement to compensation for length of service. Also at issue is whether the Delegate erred in failing to offset amounts for unauthorized expenses, overpayment of wages and materials, from wages owing. There was no appeal of the award of vacation pay.

FACTS

Mr. Sappal taught computer courses at Ahead from June 14, 2001 to December 10, 2001.

On November 20, 2001, Mr. Sappal filed a complaint with the Employment Standards Branch alleging that he had not been paid wages since October 20, 2001. The Delegate treated the complaint as confidential, since Mr. Sappal was of the view that he would be fired if Ahead was aware of his complaint. On December 5, 2002, the delegate contacted Ahead to inquire about the payment of wages to all employees. Mr. Sappal was fired on December 10, 2001. He alleged that he had been fired because he had been complaining about not being paid for a significant length of time, and sought compensation for length of service.

Nisar Ahmad Butt, the sole Director and Officer of Ahead, did not deny that Mr. Sappal was owed wages for the period October 20 to December 10, 2001, or that he was owed vacation pay. However, he contended that Mr. Sappal had fraudulently authorized his own parking and gas expenses, and that those expenses, along with the cost of replacing books and a key remaining in Mr. Sappal's possession, had to be deducted from the wages owing. He also alleged that, due to an accounting error, time taken for lunch breaks should have been deducted from wages, and were not.

Mr. Butt also alleged that Mr. Sappal's employment had been terminated for cause, specifically, that Mr. Sappal had provided misleading and false information to Ahead, had harassed fellow employees, and failed to co-operate.

Mr. Sappal advised the Delegate that Ahead had agreed to pay his gas and parking expenses because it wanted him to teach a course at the downtown campus, and the expense reimbursement was in recognition of the additional cost to him of doing so. He also advised the Delegate that, during the last 6 weeks of his employment, he worked in Vancouver from 11 am to 6 pm without taking a meal break, and that, when he was working in two locations, he ate lunch while travelling.

On February 6, 2002, the Delegate sought evidence supporting the grounds for the dismissal, indicating that allegations of misleading or false information, and harassment of employees and non cooperation were insufficient grounds for termination. Mr. Butt replied that Mr. Sappal had "harassed and threatened one of our staff members and took back by force his time sheets that he had changed to reflect original hours." He further alleged that Mr. Sappal "became very rude and insulting to one of the company directors". Finally, Mr. Butt contended that Mr. Sappal had fraudulently claimed that he (Mr. Butt) had authorized Mr. Sappal's expenses, which he had not.

Following an investigation of Mr. Sappal's complaint, the Delegate concluded that Mr. Sappal's employment had been terminated without cause, and that Mr. Sappal was entitled to compensation for length of service.

With respect to the unauthorized expenses, the Delegate noted that Mr. Butt signed all 9 paycheques that included expense reimbursement. She further noted that Mr. Sappal's October 12, 2002 cheque contained a reference, which appeared to be in Mr. Butt's handwriting, indicating that it included "traveling (sic) trip \$130 October 5". That amount corresponded with the expense claim submitted by Mr. Sappal, leading her to conclude that Mr. Sappal's expenses had indeed been authorized by Mr. Butt.

Mr. Sappal returned Ahead's training manuals and books to the Delegate, which she delivered to Ahead in March. Mr. Sappal returned the door key to Mr. Hassan on December 10, and received written acknowledgement that it had been returned.

The Delegate concluded that the accountant or payroll manager had the obligation of ensuring that proper approval was obtained before preparing paycheques. She determined that Mr. Butt, as the sole director and shareholder and officer of Ahead was responsible for instructing his staff to ensure proper procedures were followed when preparing payroll. She concluded that the expenses paid to Mr. Sappal had been authorized, and found no basis to conclude that this formed grounds for termination. She also determined that Ahead had no basis offset the expenses from wages owing. The delegate also noted that Ahead's attempt to reclaim those expenses were contrary to the Act.

The Delegate also found no evidence to substantiate Ahead's contention that lunch breaks were taken, and thus that there had been no overpayment of wages.

ARGUMENT

Ahead contends that the Delegate misunderstood the facts, leading her to arrive at an erroneous conclusion on the evidence.

It argues that the Delegate erred in concluding that Mr. Sappal did not have authority to claim expenses, and submitted a copy of Ahead's Terms of Employment. Mr. Butt contended that Mr. Sappal's expenses had not been authorized by anyone at Ahead, and that his efforts to claim them were fraudulent. Ahead submitted an affidavit from Shahzad Butt, Mr. Butts' brother, who was responsible for preparing payroll. Shahzad Butt deposed that he processed Mr. Sappal's payroll "on the element of trust basis".

Mr. Butt further contends that Ahead made accounting errors in calculating Mr. Sappal's wages amounting to an overpayment of \$396.00, and that Ahead was entitled to recover this overpayment, as well as the unauthorized expenses, from the outstanding wages. He alleged that Mr. Sappal did not deduct lunch breaks on his time sheets, and testified that he saw Mr. Sappal bringing meals and coffee to work, and consuming them at a work station.

Mr. Butt also argued that Mr. Sappal was indebted to Ahead for the cost of books it had to replace since Mr. Sappal had not returned them at the conclusion of the course, as required by his Terms of Employment. He stated that Ahead provided each instructor with one copy of each book, and that, because the books were not returned in a timely manner, Ahead had to purchase new ones for the next instructor. It contended that Mr. Sappal's copies of the books were of no use to Ahead when they were ultimately returned. Mr. Butt acknowledged receipt of the door key.

The Delegate states that she received Mr. Sappal's books in a "pristine" condition, and that they were returned to Ahead with another Branch employee. She disputed Mr. Butt's assertions that they were "in unacceptable condition".

Mr. Sappal contended that he had never received his Record of Employment ("ROE"), nor had he ever received a copy of the T-4 purportedly issued by Ahead, indicating that he had been paid \$3528 in 2001.

ANALYSIS

The burden of establishing that a Determination is incorrect rests with an Appellant. On the evidence presented, I am unable to find that burden has been met.

I will deal with each issue in turn.

Compensation for length of service

No new arguments or evidence were presented on appeal on this issue. Mr. Butt merely repeated the arguments and submissions he made to the delegate. Mr. Joomratty made no submissions on the issue of termination for cause, conceding that there was no basis for an appeal on this ground.

Had Mr. Joomratty not conceded this point, I would nevertheless have found no basis for setting aside the Determination on this ground. Mr. Butt conceded that the Terms of Employment was silent on the issue of expense payments. He also acknowledged that there were no written policies in place respect to the payment of expenses.

Quinn Donovan, another Ahead employee, deposed that he and a number of other employees routinely claimed, and were reimbursed for, expenses. Mr. Butt's response was that every employee had different employment packages, and that the terms of the payment of their expenses were all oral.

I accept that Mr. Sappal's fellow employees were routinely paid their expenses. Mr. Sappal was never told in writing that his expenses were not authorized, and his expenses were specifically identified on at least one cheque signed by Mr. Butt. I conclude that, on the basis of this evidence, Mr. Sappal's expenses were paid with Mr. Butt's knowledge and consent. Shahzad Butt deposed that he paid Mr. Sappal's expenses on the basis of "trust". Given that Shahzad Butt is Mr. Butt's brother, I place little weight on his evidence, as he is less than a disinterested party. The delegate concluded that Shahzad Butt could be presumed to have the authority to process payroll according to certain guidelines. Mr. Butt's argument that his brother, in essence, either had no authority to do what he did, or failed to follow proper procedures, lacks credibility, coming as it does after the delegate's determination.

I am unable to find the delegate erred in concluding that Mr. Sappal was entitled to the payment of his expenses, and there were no grounds for termination in this respect. No other reasons for termination were relied upon, and I infer no others existed.

Deductions from wages

The Delegate reviewed the time sheets and payroll records and determined that they were consistent. Ahead provided no clear and compelling evidence to persuade me that the determination was incorrect in determining the amount of wages owing. Mr. Sappal routinely submitted his time sheets, which were paid without question. There was no evidence, apart from Mr. Butt's own assertions, that Mr. Sappal took lunch breaks. I place little weight on Mr. Butt's assertions, as he is not a disinterested party. In any event, had Mr. Butt been concerned that Mr. Sappal was eating on the job, he could have disputed his time sheets well before the complaint was filed. The fact that he makes his allegations only after a claim for wages is advanced raises questions as to the credibility of such allegations.

Clause 5 of the Terms of Employment provided that Mr. Sappal was to return to Ahead "any and all ...records... reports...materials, equipment other documents or property..or otherwise belonging to Company..." at the time he left Ahead's employ.

There is no dispute that Mr. Sappal did not return 5 textbooks, which were the property of Ahead, until March, 2002. The Delegate contends that the books were in pristine condition, and could be used by subsequent instructors. Although Mr. Butt contended that there was only one set of books per instructor, requiring Ahead to purchase another set when the books were not returned on December 10, Mr. Sappal asserted that one of the books he received had been passed on to him by a previous instructor.

Not only am I not persuaded that there is only one set of books per instructor, I am not persuaded that the full cost of each book can be deducted from Mr. Sappal's wages. Mr. Butt initially claimed that the books were in an "unacceptable condition". This assertion was withdrawn in the face of the evidence of the Delegate, although Mr. Butt continued to assert that the books contained yellow highlighting. This assertion conflicts with the evidence of both Mr. Sappal and the Delegate. In the absence of any compelling proof the books were "unacceptable", I find that the books were like new. There is no evidence from any of the Ahead's other instructors that they received new texts at the commencement of their employment. There is no evidence of a depreciated cost of the texts, and there was no substantiation at all of the "administration fee" sought to be deducted from Mr. Sappal's wages. I do not find this claim credible, and dismiss this ground of appeal also.

Although Mr. Sappal also contended that the Delegate erred in calculating the wages owing, he has not appealed the Determination, and I have no jurisdiction to consider this issue.

ORDER

I Order, pursuant to Section 115 of the *Act*, that the Determination dated March 5, 2002 be confirmed in the amount of \$4,025.00, plus whatever interest might have accrued since the date of issuance.

Carol L. Roberts
Adjudicator
Employment Standards Tribunal