

An appeal

- by -

G.V.D. Vehicle Detailing Inc.
("GVD")

- and by -

Robert Gammon a Director of G.V.D. Vehicle Detailing Inc.
("Robert Gammon")

- 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: Wayne R. Carkner

FILE No.: 2001/173 and 2001/175

DATE OF DECISION: May 25, 2001

DECISION

OVERVIEW

This is an appeal by Robert Gammon and GVD, pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) against two Determinations of the Director of Employment Standards (the “Director”) both issued on February 6, 2001. In this appeal GVD claims that no wages are owed to Mr. Bruce Duff (“Duff”) and that if any remedies are found owing to him, Robert Gammon alleges that he bears no liabilities for any of the remedy(s). Further, the appellants request a cancellation of the Determinations pursuant to Section 115 of the *Act*.

ISSUES TO BE DECIDED

The first two issues in this case are whether or not GVD has established any grounds for appeal of the Determination issued against it by the Director on February 6, 2001. The first issue is whether or not GVD failed to comply with Sections 40 (1) and 40 (2) of the *Act* with respect to the overtime provisions for payment of double time to Duff. The second issue is whether or not GVD violated Section 21 (1) of the *Act* by making improper deductions from the Duff’s payroll. The last issue is to determine if Robert Gammon has established any grounds for appeal of the Determination issued against him as a Director or Officer of GVD.

FACTS

There does not appear to be any substantial dispute on the facts in these cases.

Duff worked as an automotive detailing technician from October 7, 1999 until July 29, 2000 for GVD. Duff voluntarily resigned his employment. Duff filed a complaint, received by the Director on August 21, 2000. A demand for records was issued in September and these were supplied to the Director’s Delegate. The records clearly showed that GVD was in contravention of Sections 40 (1) and 40 (2) of the *Act* by failing to apply the overtime provisions for payment of double time.

Duff, in the performance of his duties in July 2000, damaged a vehicle that he was detailing. The damage to the vehicle was covered by Employer’s insurance coverage; however, the insurance coverage has a \$500.00 deductible requirement. GVD deducted two \$250.00 payments from Duff’s cheques in July 2000 to cover the \$500.00 deductible on the insurance policy.

GVD argues that no further wages should be forthcoming to Duff as a result of the damage that Duff did to a customer’s car and further argues that Duff resigned without any notice and this had an economic impact on GVD’s business.

For these reasons GVD requests that the Determination issued against it, dated February 6, 2001, be cancelled.

Robert Gammon provided no reasons for the appeal of the Determination against him as a Director or Officer of GVD other than a request for cancellation of the Determination. It is clear from the Corporate Registry that Robert Gammon was a Director/Officer of G.V.D. Detailing Inc. at the time the alleged contraventions of the *Act* occurred. It is further established that the remedies established in the Determination issued against GVD constitute less than two months wages.

ANALYSIS

It is clear on the undisputed evidence and documents provided by GVD that GVD has contravened Sections 40 (1) and 40 (2) of the *Act* by failing to pay the double time portions of the overtime worked by Duff between October 7, 1999 and July 29, 2000.

Regarding the issue of the two \$250.00 deductions made from Duff's payroll in July, 2000, the *Act* is very clear. GVD's deductions from Duff's payroll to cover the insurance deductible is a clear contravention of the *Act*. The damage to the vehicle occurred in the performance of Duff's duties. This is just another cost of doing business. The only recourse that GVD had was to take disciplinary measures if proper cause could be established.

GVD's argument that Duff resigned without notice and that this had an economic impact on his business is also without merit. There is no provision in the *Act* that provides for an Employer to withhold wages in lieu of proper notice of resignation of an employee.

Turning to the Determination issued against Robert Gammon, it is undisputed that he was a Director/Officer of G.V.D. Detailing Inc. at the time GVD contravened the *Act*. It is also clear that the remedy outlined in the Determination issued against GVD constitutes less than two months wages.

Section 96 of the *Act* provides as follows:

s.96 Corporate Officer's Liability for unpaid wages

- (1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee

This language is very clear and unambiguous and leaves no room for alternate interpretations. Accordingly I find that Robert Gammon has not established any grounds to vary or cancel the Determination issued against him as a Director or Officer of GVD.

ORDER

Pursuant to Section 115 of the *Act*, I order that the two Determinations dated February 6, 2001 be confirmed.

Wayne R. Carkner
Adjudicator
Employment Standards Tribunal