

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 -

Cariboo Chevrolet Oldsmobile Pontiac Buick GMC Ltd.
("Cariboo")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	Hans Suhr
FILE No.:	97/355
DATE OF DECISION:	June 17, 1997

DECISION

OVERVIEW

This is an appeal by Cariboo Chevrolet Oldsmobile Pontiac Buick GMC Ltd. (“Cariboo”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination which was issued by a delegate of the Director of Employment Standards (the “Director”) on April 14, 1997. Cariboo alleges that the delegate of the Director erred in the Determination by concluding that illegal deductions were made from the wages of Keith Andrew Williment (“Williment”). The Director’s delegate concluded that wages in the amount of \$510.00 plus interest were owed to Williment for those illegal deductions.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether wages are owed to Williment?

FACTS

The parties agree that deductions were taken from Williment’s pay for coveralls, social fund and coffee.

The parties further agree that there was no written authorization for these deductions.

Cariboo states that Williment verbally agreed to these deductions as a condition of employment prior to being hired and in fact received value from the social and coffee funds. Cariboo further states that Williment never complained to Cariboo about the deductions.

ANALYSIS

The Act in Section 4 provides:

“Requirements of this Act cannot be waived

The requirements of this Act or the regulations are minimum requirements, and an agreement to waive any of those requirements is of no effect, subject to sections 43, 49, 61 and 69.” (emphasis added)

The verbal agreement between Cariboo and Williment to permit deductions would be contrary to Section 4 of the Act and therefore of **no effect**.

With respect to the issue of coveralls, coveralls are deemed to constitute “special clothing” in these circumstances and fall under the provisions of Section 25 of the *Act* which provides:

“Special clothing

- (1) An employer who requires an employee to wear special clothing must, without charge to the employee,
 - (a) provide the special clothing, and*
 - (b) clean and maintain it in a good state of repair, unless the employee is bound by an agreement made under subsection (2).**
- (2) If an employer and the majority of the affected employees at a workplace agree that the employees will clean their own special clothing and maintain it in a good state of repair,
 - (a) the agreement binds all employees at that workplace who are required to wear special clothing,*
 - (b) the employer must reimburse, in accordance with the agreement, each employee bound by the agreement for the cost of cleaning and maintaining the special clothing, and*
 - (c) the employer must retain for 7 years records of the agreement and the amounts reimbursed.**
- (3) The following are deemed to be wages owing and this Act applies to their recovery:
 - (a) money received or deducted by an employer from an employee for providing, cleaning or maintaining special clothing;*
 - (b) money and employer fails to reimburse under subsection (2).”**

Cariboo may not, pursuant to the provisions of Section 25 of the *Act*, deduct any costs associated with the coveralls from any employee.

With respect to the authorization for any deductions, Section 22 of the *Act* provides:

“Assignments

- (1) An employer must honour an employee’s written assignment of wages
 - (a) to a trade union in accordance with the Labour Relations Code;*
 - (b) to a charitable or other organization, or pension or superannuation or other plan, if the amounts are deductible for income tax purposes under the Income Tax Act (Canada),**

- (c) *to a person to whom the employee is required under a maintenance order, as defined in the Family Maintenance Enforcement Act, to pay maintenance,*
- (d) *to an insurance company for insurance or medical or dental coverage, and*
- (e) *for a purpose authorized under subsection (2).*
- (2) *The director may authorize an assignment of wages for a purpose that the director considers is for the employee's benefit.*
- (3) *An employer must honour an assignment of wages authorized by a collective agreement.*
- (4) *An employer may honour an employee's written assignment of wages to meet a credit obligation."*

There was no evidence provided of any **written** authorization by Williment for deductions for coveralls or for the social or coffee funds.

Deductions which an employer is permitted to withhold from an employee's pay are set forth in Section 21 of the *Act* which provides:

"Deductions

- (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 the employer's business costs 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."*

In the absence of written authorization from Williment, the deductions made by Cariboo for the purposes of the social and coffee funds are contrary to Section 21 (1) of the *Act*.

The deductions made by Cariboo from Williment for the coveralls is contrary to Section 25 and 21(2) of the *Act*.

I therefore conclude that Williment is owed wages from Cariboo.

I am satisfied that the amount of wages owing as calculated by the delegate of the Director and attached to the Determination are correct.

For all of the above reasons this appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act* I order that the Determination be confirmed in the amount of \$510.00 **plus** interest calculated pursuant to Section 88 of the *Act*.

Hans Suhr
Adjudicator
Employment Standards Tribunal