

**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 -

478125 B.C. Ltd operating as Servicemaster of Vernon  
("Servicemaster")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 98/144

**DATE OF HEARING:** May 26, 1998

**DATE OF DECISION:** June 18, 1998

**DECISION**

**APPEARANCES**

Patrick Dooley	on behalf of 478125 B.C. Ltd operating as
Gordon Macklem	Servicemaster of Vernon

**OVERVIEW**

This is an appeal by Servicemaster, under Section 112 of the *Act*, against a Determination dated February 12, 1998 which was issued by a delegate of the Director of Employment Standards. The Determination requires Servicemaster to pay \$2,380.51 to Cory Evans, a former employee, on account of unpaid wages, unauthorized deductions from wages and interest (as of the date of the Determination).

Servicemaster's appeal is based on several grounds: Mr. Evans failed to submit timesheets or submitted them late; the deductions from Mr. Evan's wages were authorized; and Mr. Evans was dishonest in his handling and reporting of cash received from customers.

A hearing was held in Vernon, BC on May 26, 1998 at which time only Patrick Dooley and Gordon Macklem appeared. Cory Evans wrote to the Tribunal on May 28, 1998 to apologize for his failure to attend the hearing.

**ISSUES TO BE DECIDED**

There are two issues to be decided in this appeal.

- (i) Was Cory Evans paid all wages to which he was entitled under the *Act*? and
- (ii) Did Servicemaster make unauthorized deductions from Cory Evan's wages?

**FACTS**

Cory Evans was employed by Servicemaster from May 2, 1996 to August 9, 1996. His initial rate of pay was \$8.00 per hour and it was increased to \$8.50 per hour on August 1, 1996.

Servicemaster provides carpet and furniture cleaning services as well as fire and flood restoration services. Its major customers for fire and flood restoration services are insurance companies which expect a very prompt or "emergency" response by Servicemaster.

There is no dispute that Evans was not paid wages for all hours worked by him either because he did not complete certain timesheets or because he submitted them after the payroll “cut-off” date. In a memo dated August 4, 1996, Cory Evans was advised that timesheets were “missing” for 9 work-days in the period July 26 - August 3, 1996. The same memo acknowledges that Evans had not been paid wages for other hours he worked but for which timesheets were submitted late or not at all. The memo also reminded him of his responsibility to complete timesheets properly, as set out in a memo sent to all employees on June 12, 1996.

Mr. Evans’s hourly wage rate was increased by 50 cents per hour on August 1, 1996 because he had successfully completed a two-day course in carpet cleaning techniques. Servicemaster’s written policy (undated) states in part:

- (A) All courses taken by staff pertinent to their work will be paid by the staff member.
- (B) After one year from the date of these courses, if you are still employed with us, the costs will be repaid to you.

Servicemaster’s unwritten policy is to refund the course fee after an employee has completed one year of employment. It relies on an undated and unsigned “Authorization” for making deductions totalling \$240.77 from Evans’s wages.

The Determination includes the following reasons for the conclusion that wages are owed to Evans and that unauthorized deductions were made from his wages:

The information provided by the employer in the form of payroll records established there were missing periods of recorded hours of work.

The information provided by the complainant in the form of copies of the daily employee time sheets established on reconciliation of records that there were period of hours worked and not paid for.

November 5, 1997, correspondence to the employer with attached copies of the computer generated calculation for overtime were forwarded.

On December 2, 1997, a telephone call to the employer caused the November 5, 1997 letter to be resent by fax as the employer claimed not to have received the original correspondence.

December 11, 1997, a call from the employer established that the overtime claim of the complainant was to be challenged. No grounds for the challenge were given.

The employer had been afforded the opportunity to provide evidence that wages were paid. The employer has refused to provide any documents to

dispute the claim and evidence of Mr. Evans that wages are owed and that the deduction for the seminar fee was without written consent.

The reconciliation of the incomplete records of the employer and the undisputed missing time sheets provided by the complainant show hours of work and overtime as not being paid for.

There has been no evidence from the employer that written authorization was provided by Mr. Evans for the withholding of funds for the seminar fee.  
(reproduced as written)

Servicemaster has made serious allegations about dishonest activities by Evans during his employment. However, these allegations were not raised during the investigation which was conducted by the Director's delegate prior to making his Determination. Servicemaster did not terminate Mr. Evans's employment and, at the hearing, sought to rely on an unsworn written statement by Ted Decock to support one element of its submission on this issue.

## **ANALYSIS**

The starting point of my analysis is the Determination which, in summary, found that: Servicemaster's payroll records pertaining to Mr. Evans were incomplete; a comparison of Mr. Evans's records established that he was owed wages; and, there was no written authorization to deduct wages from Mr. Evans's wages.

As the appellant, Servicemaster bears the onus of establishing, on the balance of probabilities, that the Determination should be cancelled or varied.

The relevant sections of the *Act* are: Section 17 (Paydays); Section 21 (Deductions); and Section 22 (Assignments). I note that the text of these sections was reproduced in the Determination as part of the analysis made by the Director's delegate.

When I review all of the evidence and submissions in this appeal, I find that I concur with the Determination made by the Director's delegate and with his reasons for making it. Servicemaster did not put any evidence before me which would establish that Mr. Evans is not entitled to the amounts set out in the Determination.

Every employer is required to pay "... all wages earned by an employee in a pay period" [Section 17(1)] and "...must keep records" pertaining to employment and hours of work [Section 28(1)]. The requirement to maintain records is placed clearly on the employer not on the employee. It is an employer's responsibility to structure its affairs to ensure that it complies with the *Act*. An employer cannot abrogate those responsibilities by attempting to place the responsibility for record-keeping onto its employees. Clearly, if an employee does not complete time-records as and when requested by an employer, the employer may take appropriate action. However, simply not paying wages to which an employee is

entitled is not an appropriate response by an employer and is contrary to the requirements of the *Act*.

As noted above, Servicemaster has made allegations that Mr. Evans was dishonest in his reporting and handling of cash and possibly, in his recording of hours on his timesheets. However, the evidence tendered by Mr. Dooley and Mr. Macklem in this appeal falls short of establishing , on the balance of probabilities, that these allegations are true. It may be that the allegations are capable of being proven, but I make no comment on that possibility. But, even if they were proven, it would be contrary to the requirements of the *Act* to allow Servicemaster not to pay wages to Mr. Evans for all hours worked by him. Servicemaster may wish to seek appropriate legal remedies which may be available to it in another forum.

**ORDER**

I order, under Section 115 of the *Act*, that the Determination be confirmed.

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**Geoffrey Crampton**  
**Chair,**  
**Employment Standards Tribunal**

GC/bls