

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act S.B.C. 1995, C. 38*

- by -

Lawson Oates Chrysler Ltd.  
("Lawson Oates")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE NO.:** 96/470

**DATE OF DECISION:** October 5, 1996

## DECISION

### OVERVIEW

The appeal is by Lawson Oates Chrysler Ltd. ("Lawson Oates") pursuant to Section 112 of the *Employment Standards Act* ("the *Act*") against Determination # CDET 003510 of the Director of Employment Standards (the "Director"), a decision dated July 26, 1996. The Determination, issued as a result of a complaint by Rocky Prokop ("Prokop"), finds that in deducting moneys from Prokop's pay, Lawson Oates deducted business costs contrary to section 22(2) of the *Act*. Prokop was found to be owed \$737.51 including vacation pay and interest. Lawson Oates argues that it did not deduct business costs but the cost of repairs to vehicles damaged by Prokop while he had personal use of a car and that all of the vacation pay to which he was entitled, was paid.

### FACTS

Rocky Prokop was employed by Lawson Oates as a salesman from June 16, 1995 until March 29, 1996. As such he had the use of a company car, a demonstrator.

Prokop signed a document dated June 26, 1995 in which it is said that he had read and understood company policy on accidents involving company cars and agreed that *"the company may charge my employee account with the cost of the insurance deductible applicable, and may also deduct this amount from my next pay cheque following any accident"*.

On arriving for work one day and parking his car, Prokop backed his demonstrator into a van parked on a Lawson Oates car lot. Repairs to the two vehicles were performed in February of 1996 at a cost of \$695.50.

The cost of repairs was not covered by insurance given deductibles and was deducted from Prokop's pay, at a rate of \$100.00 per cheque. It is said by the employer that Prokop agreed to that payment scheme in discussing the accident with the Sales Manager of Lawson Oates, Bill Curtis.

In launching his complaint to the Employment Standards Branch, Prokop said that some \$1,300 had been improperly deducted from his wages, at least in part as a result of overcharging. Prokop said that he had lost his receipt.

The Determination is a finding that Prokop was charged \$695.50 for vehicle repairs and that, as he was in the process of reporting for work, on company property and driving a company vehicle, the accident was during the course of company business and the cost of repairs is a cost of doing

business. The Determination notes that section 21(2) of the *Act* prohibits an employer from requiring an employee to pay any of the employer's business costs. Lawson Oates was found to owe Prokop \$695.50 plus vacation pay and interest on that amount.

The appeal is that the accident is not "*work related*", that no company duties were being performed. Lawson Oates also says that it paid all of the vacation pay owed Prokop.

### ISSUES TO BE DECIDED

The first issue to decide is whether the deduction for car repairs is allowed by the *Act*.

A second issue to be decided is whether any vacation pay is owing.

### ANALYSIS

The appellant argues that the Determination is wrong, that the accident occurred while Prokop had personal use of his company car. I agree. The evidence is clear, the accident occurred as Prokop was in the process of reporting for work. He had not yet begun work. He was using the car for personal reasons.

As the car was being used for personal reasons at the time of the accident, Lawson Oates is entitled to expect Prokop to pay for repairs not covered by insurance, to the extent that they are reasonable. There is nothing to support a conclusion that they are not.

An employer may not automatically deduct the cost of repairs even though the car was being used for personal reasons at the time of the accident. Section 21 (1) of the *Act* states, "*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*". The *Act* does permit an employer to honour a credit obligation, section 22 (4) states "*An employer may honour an employee's written assignment of wages to meet a credit obligation*" (emphasis added).

In the case at hand, Prokop has an obligation to pay for vehicle repairs. There is also a written assignment of wages specifically for repair costs not covered by insurance, the document of June 26, 1995. The agreement only has force and effect where the vehicle is driven for personal use, given the *Act*, but that is the situation here. And it is an agreement that was reaffirmed through discussion of how much would be deducted from each cheque until repairs were paid for, that is the evidence. I conclude that the \$695.50 deduction for repairs is allowed by the *Act*, there being a written assignment of wages to meet a credit obligation.

Turning to the finding that vacation moneys are owed, I note the Determination fails to provide any reasons as to why the moneys were found to be owed. There is only the calculation, that \$27.82 is owed, and I note that is 4 % of the cost of repairs.

Lawson Oates says that it has already paid that vacation pay, that vacation pay was paid on all wages. On reviewing the evidence I find absolutely nothing which supports a conclusion that vacation pay is owed, that Lawson Oates failed to calculate Prokop's vacation pay on the basis of his gross pay, as employers normally do, but for some reason paid vacation pay on his net wages after the cost of repairs had been deducted. On the matter of vacation pay the Determination is without support.

The above analysis of the issues leads me to conclusions which require cancellation of the Determination.

**ORDER**

I order, pursuant to Section 115 of the *Act*, that Determination # CDET 003510 be cancelled.

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**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**

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