

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 -

Noemi Pelegrin-Tudor operating as Fabutan Suntan Studios
("Fabutan")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 99/293

DATE OF DECISION: July 7, 1999

DECISION

OVERVIEW

This is an appeal by Noemi Pelegrin-Tudor operating as Fabutan Suntan Studios ("Fabutan") pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination issued by a delegate of the Director of Employment Standards (the "Director") on May 6, 1999.

The Determination found that Fabutan improperly deducted the cost of airfare from wages payable to Farrah Boudreau ("Boudreau") contrary to Section 21(1) of the *Act*, and ordered Fabutan to pay Boudreau the amount of \$144.51.

This appeal is decided based on the written submissions of the parties, Fabutan and Boudreau.

ISSUES TO BE DECIDED

The sole issue to be decided is whether the employer, Fabutan, deducted the cost of airfare from Boudreau's wages contrary to the *Act*.

FACTS

There is no dispute as to the following facts: Boudreau was employed by Fabutan between September 1, 1998 and November 9, 1998; Boudreau accompanied the employer to Calgary; the employer paid for Boudreau's ticket to Calgary in the amount of \$139.87; the employer deducted that amount from Boudreau's final pay cheque dated November 6, 1998.

The dispute arises as to the arrangement and purpose of the trip to Calgary.

In her appeal application received May 17, 1999, Noemi Pelegrin-Tudor ("Pelegrin-Tudor") states that she required a full-time employee at her studio for 6 months while she herself returned to her employer to fulfill the requirements of her maternity leave. She required a "guaranteed" employee for 6 months at the end of which she would be able to work at her own studio. The employer further argues she had a verbal agreement with Boudreau where the employer agreed to pay for Boudreau's flight on the condition that Boudreau agreed to a six-month employment period.

Fabutan contends that the purpose of the trip was to finalize the purchase of her studio and to be trained on the accounting and administrative aspects of the business. It was not to train either herself or Boudreau on the equipment. Furthermore, if training was required she claims that given her experience in the industry and the simple nature of the

equipment, she was fully able to provide instruction on its use herself. In her submission dated June 24, 1999, the employer admits that Boudreau spent the day with her at the studio to learn, but adds that it was also to get a tan. She further stresses that her verbal agreement with Boudreau was "understood, authorized, and legal."

The employer argues that the trip was not a business expense, it was paid with personal money. She says that the verbal agreement in issue was made prior to their November 4, 1998 meeting, and disagrees with Boudreau's claim that the agreement was made under conditions of duress.

On the other hand, Boudreau contends that Pelegrin-Tudor had agreed to pay for her flight to Calgary, as the trip was to receive work-related training. This agreement was reached during a meeting at Pelegrin-Tudor's home. It was never said or suggested that she would have to repay Pelegrin-Tudor for the ticket or that she would guarantee working at Fabutan for six months. In fact, Boudreau argues she told the employer up front that she might leave before the six months expired if her boyfriend sent her a ticket to join him.

During the Calgary trip, Boudreau states they both spent a full day being trained in a Calgary Fabutan, learning the day-to-day operations of running the studio, including the use of the equipment. In addition, she spent the duration of the trip being trained on the same operations. Boudreau also explains the reason for her training as being to become familiar with operations of the studio, to be able to train other employees, and to alleviate the employer from the stress of such responsibilities. Furthermore, she states that on their return to Vancouver, Pelegrin-Tudor would have to return to her job at Surrey Legal Services. Therefore, she would be unavailable to provide her with the necessary training. Finally, Boudreau states she does not know how Pelegrin-Tudor paid for the ticket and did not think it any of her concern.

In the Determination, the Director made a finding of fact that the purpose of the trip was so that both parties could be trained on the relevant equipment and that the deduction made from Boudreau's final pay cheque was \$139.87.

ANALYSIS

The onus is on Fabutan to show that the deduction of part of Boudreau's wages is permitted by the *Act* or by some other enactment (*Re Wedding*, BC EST D#574/98). It is my conclusion that Fabutan has failed to meet this burden and as a result the Director's Determination must be confirmed.

Fabutan argues that in accordance with a verbal agreement, Boudreau would only be entitled to the Calgary ticket if she completed six months of employment with the company. Section 4 of the *Act* specifically prevents an employer or employee from waiving the minimum requirements of the *Act*.

Section 21 of the *Act* provides:

21 (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.

Section 21(1) contains a clear statement prohibiting employers from making deductions from an employee's wages. There are few exceptions to this rule. Sections 21 and 22 of the *Act* prohibit an employer from withholding wages from an employee without their authorization for any reason, except for income tax, CPP, UIC and a court order to garnishee the employee's wages (*Re Zajc (c.o.b. Norstar Int. Dev. Ltd.*), BC EST #D011/96). This means Fabutan is forbidden from making any deductions beyond those agreed to by Boudreau.

The *Act* further provides the type of authorization required to allow an employer to make deductions from an employee's wages. In the circumstances present in this appeal, subsection 22(4) of the *Act* provides the only basis upon which the deduction could be allowed:

(4) An employer may honour an employee's written assignment of wages to meet a credit obligation.

The mandatory language of the *Act* requires, at a minimum, a written document by an employee which clearly represents an assignment of that employee's wages (*Wedding*, BC EST D#574/98). Verbal agreements as offered in this situation are not sufficient. Thus, even if the relationship between Fabutan and Boudreau created a credit obligation of some kind, the deduction made by Fabutan would contravene Section 22(4) of the *Act* because Boudreau did not provide a clear and unequivocal written assignment of wages.

Finally, if the employer is of the view that it has a valid monetary claim against Boudreau, such a claim must proceed as would any other civil action. In other words, if Pigeon-Tudor is alleging that a private agreement existed between herself and Boudreau for repayment of the plane ticket, she must pursue Boudreau for reimbursement by way of a separate civil action. It is not open to the employer to refuse to pay wages earned.

As this case turns on a statutory prohibition against deductions from employee wages and the lack of a written assignment of wages, it is unnecessary for me to address whether or not a verbal agreement actually existed or whether or not it was made under conditions of duress.

ORDER

Pursuant to section 115 of the *Act*, I order that Determination dated May 5, 1999 be confirmed in the amount of \$144.51 together with any interest that has accrued pursuant to section 88 of the *Act*.

Norma Edelman
Acting Chair
Employment Standards Tribunal

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