

An appeal

- by -

D.W.D. Logging Ltd.  
(the "Employer")

- 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.:** 2001/272

**DATE OF DECISION:** May 31, 2001

## DECISION

This Decision is based on written submissions.

### SUBMISSIONS

For the Employer: R. Dale Janowsky Q.C.

For the Employee: David Dillon

For the Director: Ken MacLean

### OVERVIEW

This is an appeal by D.V.D. Logging Ltd. (the Employer) pursuant to Section 112 of the Employment Standards Act (the Act) against Determination No. ER64257 issued by a delegate of the Director of Employment Standards (the Director) on March 14, 2001 ordering the Employer to:

- Cease and desist from contravening Part 3, Section 21 of the Act and;
- Payment of \$3000.00 and accrued interest (\$3.70) to David Dillon as remedy for the contravention of the Act.

### ISSUES TO BE DECIDED

Whether or not the appellant has established grounds for appeal and whether or not this case should be referred back to the Director for further consideration.

### FACTS

The Employee was employed as a logger by the Employer from April 4, 1984 until May 30, 1999 and was paid at the hourly rate of twenty-four (\$24.00/hr.) dollars per hour at the time he resigned his employment. On November 1, 1996, Mr. Dillon received a personal loan of three thousand (\$3000.00) from his employer. After Mr. Dillon resigned the Employer provided the Employee with a cheque representing a final payment to Mr. Dillon for outstanding overtime pay, travel time pay and statutory holiday pay. The Employer deducted from this final payment the sum of three thousand (\$3000.00) as the outstanding payment for the loan provided to Mr. Dillon in November 1996. Mr. Dillon provided no written/verbal authorization to the Employer authorizing this deduction.

## ARGUMENTS

The Counsel for the Employer argues that the appeal be allowed for the following reasons:

- there is an error in the facts;
- there is a different explanation of the facts;
- the facts relevant to the issue were not considered.

Counsel argues that Mr. Dillon acknowledges receipt of the loan and alleges that he paid the loan back yet has not provided any proof of payments on the loan or proof that deductions from his payroll were applied against the loan. Counsel further submits that Mr. Dillon's claim that the loan has been paid off through previous deductions is incorrect. Counsel submits that as there is no substantive evidence provided by the Employee that the loan was paid off that the \$3000.00 deduction is appropriate. Counsel for the Employer submits that the case be sent back to the Director's Delegate for further investigation and that the Employer's accountant can review the salary records for Mr. Dillon to determine whether or not the loan was repaid by the Employee.

Mr. Dillon argues that he has paid back the loan in 1998 and that the attachment to his submission outlines the arrangement to repay the loan and asserts that the loan was paid off in full. Mr. Dillon further states that at no time did he provide either written and/or verbal authorization to the Employer to deduct the amount of the loan from the outstanding wages owed at the time of his resignation.

The Director submits that the request to send the issue back to the Director's Delegate would be futile as the only issue in this case is whether or not **“the Employer has received the authority of the Employee to deduct the amount of the loan in question from the Employee's wages?”** The director submits that the employee states he has not provided authorization and the Employer is not alleging that it had received authorization. Therefore, based on these facts the Employer is in contravention of Part 3, Section 21(1) of the Act, and the Determination should be upheld.

## ANALYSIS

Section 21(1) of the Act reads:

**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.

The Tribunal has applied this Section of the Act consistently. No deductions other than statutory deductions are allowed without the express authorization of the affected employee. In the

present case there is no dispute as to whether or not Mr. Dillon authorized the Employer to deduct the \$3000.00 from his final pay cheque. The facts clearly show that he did not authorize the deduction. The dispute on the facts on whether or not the loan was paid back has no relevance in this case. The issue as outlined by the Director is correct, and the Employer's case lives or dies on the issue of authorization by the employee. A thorough review of the Tribunal's Decisions supports this finding of the narrow interpretation of Section 21(1). Should the Employer still, after reviewing his books, wish to seek relief he will have to do so under another venue.

### **ORDER**

Pursuant to Section 112 of the Act, I order the Determination dated March 14, 2001, regarding the payment of \$3003.70 by D.V.D. Logging Ltd. to David Dillon, is confirmed.

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**Wayne R. Carkner**  
**Adjudicator**  
**Employment Standards Tribunal**