

**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 -

Amarith Enterprises Inc.  
("Amarith")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Niki Buchan

**FILE NO.:** 97/405

**DATE OF DECISION:** July 8, 1997

## DECISION

### OVERVIEW

This is an appeal brought by Sothearo Keo (“Keo”) on behalf of Amarith Enterprises Inc. (“Amarith”) pursuant to S. 112 of the *Employment Standards Act* (the “Act”) of the Determination dated April 24, 1997 issued by the delegate of the Director of Employment Standards (the “Director”). The Determination finds that Amarith has contravened Sections 18, 21, & 63 of the *Act*. It orders Amarith to pay Mohammed R. Alampour (“Alampour”) \$346.00 reimbursement for his final pay, \$640.00 wages in lieu of notice, and \$10.09 interest. The total amount owing is \$996.09.

In his appeal submission the appellant complains of improper treatment by the delegate of the Director stating that she never asked for a document about the two weeks pay and then finding that he failed to provide it. He also claims that she agreed that it was a 28 hour week but changed her mind to find a 40 hour week because he did not agree her that the \$500.00 was a loan. He states that the \$500.00 was an advance on wages.

### ISSUES TO BE DECIDED

1. Whether Alampour is entitled to two weeks pay in lieu of notice ?
2. Whether Amarith is entitled to deduct final wages in satisfaction of a personal loan made to Alampour ?

### FACTS

1. Alampour was hired as a cashier by Amarith on May 10, 1995 and terminated January 31, 1997.
2. The reasons alleged for termination were that Alampour failed to secure the store properly in August 1996 and a burglary resulted in a loss to Amarith. The second reason given is that Alampour failed on occasions to wear his uniform hat.
3. Keo alleged that he intended to terminate Alampour on January 3, 1997. He was given a cheque in the amount of \$500.00 that is marked “Advance for 2 weeks salary”. That cheque is dated, and was cashed, on January 3, 1997.
4. Keo claims the \$500.00 advance was both compensation for service and an advance on wages.
5. The Record of Employment issued to Alampour states that January 31, 1997 was his last day of work.
6. On termination Alampour was given a final pay cheque in the amount of \$346.00 that was taken back by Keo and deposited in Amarith’s bank account. Initially Keo stated to the delegate of the Director that he withheld the wages to satisfy a personal debt.

Subsequently, he stated he withheld the wages because Alampour had already received an advance of \$500.00 and therefore was not owed any additional wages. He later reverted to his original claim that the wages had been taken back to satisfy payment of personal loans made to Alampour in July 1996.

7. Keo provided no written assignment to deduct wages from Alampour to meet a credit obligation. He did not provide evidence that Alampour worked only 28 or 32 hours per week during the last 8 weeks of employment.

## **ANALYSIS**

The Director is correct in finding that Alampour was terminated without cause and is entitled to two weeks pay in lieu of notice. Amarith did not have cause to terminate for failure to secure the store that occurred approximately four to five months prior to the termination. Also, failure to wear the uniform hat is not cause for termination in this case.

The question then is whether the Determination is correct in awarding Alampour \$640.00. The appellant argues that Alampour's hours had been reduced but provided no evidence to support that statement. While he complains that he was not asked for this information before the Determination was issued, he still did not produce the information with his appeal submission. Therefore the finding that payment should be based on a 40 hour week is confirmed. Alampour is entitled to the \$640.00.

With respect to the \$346.00 final pay being taken back to satisfy a personal debt, the *Act* is clear that this type of deduction is not allowed. Section 21(1) states

*S. 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 22(4) does allow an employer to honour an employee's written assignment of wages to meet a credit obligation. In this case there is no written assignment therefore the \$346.00 in final wages is owing to Alampour.

In conclusion, I find the Determination to be reasonable and correct.

**ORDER**

In summary, I order under Section 115 of the *Act*, the Determination dated April 24, 1997 be confirmed.

**Niki Buchan**  
**Adjudicator**  
**Employment Standards Tribunal**