

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 -

Rabbit Hut Automotive (1998) Inc.
("Rabbit Hut" or the "employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Paul E. Love

FILE NO.: 2000/274

DATE OF DECISION: August 8, 2000

DECISION

OVERVIEW

This is an appeal by the employer of a Determination dated March 22, 2000. In the Determination the Delegate found that an employee, Thomas Trampf, was entitled to vacation pay and interest in the amount of \$2,106.39. The employer claims that he advanced the sum of \$2,562.13 on behalf of the employee on account of recovery and storage of a motorcycle and payment of tool expenses. The employer further argued that the employee stole electronic data from a scan machine and hid the machine. The employer did not dispute the essential findings made by the Delegate in particular that the employee was entitled to holiday pay, that the holiday was unpaid, and that the employer did not have the employee's authorization to deduct charges or payments from wages. The matters raised by the employer did not fall within the jurisdiction of the Tribunal. I dismissed the appeal as the employer did not show that the Delegate erred in the Determination.

ISSUE TO BE DECIDED

Did the Delegate err in determining that the employee was entitled to be paid holiday pay, when the employer advanced, without the employee's authorization, money and services to the benefit of the employee?

FACTS

Thomas Trampf worked as a shop foreman at Rabbit Hut Automotive (1998) Inc. between June/July 1998 to August 10, 1999. He was paid at the rate of \$3,500 per month. At the time of the Determination the company was no longer in operation.

The employer acknowledges that the complainant was not paid his annual vacation upon termination of employment. The employer alleges that there is no money owing to Mr. Trampf because the employer made a number a of payments and charges on behalf of Mr. Trampf. Mr. Trampf was in a serious motor vehicle accident. The employer indicates that he made many payments on Mr. Trampf's behalf because of the motor vehicle accident, and the injuries Mr. Trampf sustained in the accident. The employer claims that he advanced the sum of \$2,562.13 on behalf of the employee on account of recovery and storage of a motorcycle and payment of tool expenses. The employer further argued that the employee stole electronic data from a scan machine and hid the machine on the date Mr. Trampf resigned from his employment. Mr. Trampf disputes the allegation relating to theft of the electronic data cartridge.

With respect to the payments and charges made, the Delegate found that these items were not authorized by Mr. Trampf.

The Delegate accepted the documents provided by the employer and found that vacation pay in the amount of \$2,027.16, and interest in the amount of \$79.23, for a total of \$2,106.00, was owed to Mr. Trampf

ANALYSIS

The burden is on the employer to demonstrate that there is an error in the Determination such that I should vary or cancel the Determination. It may well be that the employer has a claim against Mr. Trampf for services provided, or payments made, or a claim in regard to the alleged theft. These claims, however, are not within my jurisdiction as an adjudicator pursuant to the *Act*, and I make no finding concerning the merits of such a claim. It is not open to me to “set off” the employer’s claims against the employee’s entitlements under the *Act*. Although the employer may perceive that the employee is indebted to him, the *Act* clearly specifies in s. 21(1) that an employer may not withhold or require payment of all or part of an employee’s wages without a written assignment by the employee to the employer. The types of assignments that an employer must honour are set out in s. 22 of the *Act*.

The appeal submission of the employer, made in writing, does not reveal that the Delegate erred. The employer does not dispute any of the essential findings concerning the amount of the vacation pay or the fact that the vacation pay is unpaid. The employer does not dispute the finding of the Delegate that Mr. Trampf did not authorize any payments to be made, or deductions to be made on his behalf.

Given that the employer has raised no error, this appeal is dismissed.

ORDER

Pursuant to section 115 of the *Act*, I order that the Decision in this matter, dated March 22, 2000 be confirmed.

Paul E. Love
Adjudicator
Employment Standards Tribunal