

An appeal

- by -

R. Phillips & Associates International Ltd.
("Phillips")

- 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: April D. Katz

FILE No.: 2002/118

DATE OF DECISION: July 15, 2002

Phillips did not keep time records that showed any alleged absences. Phillips had payroll records from March 2000 to August 2, 2000 which showed that Kohonen was paid wages but not paid any vacation pay. Kohonen did not have records to assist in calculating any outstanding wages.

The Determination relied on the payroll records provided for March to August 2000 and found the outstanding vacation pay owed to Kohonen to be \$915.20.

ANALYSIS

The onus of proving the Director has erred is on the appellant in an appeal to the Tribunal.

In its submissions, Phillips has not disputed the vacation pay was due to Kohonen but has argued that the money owed should be applied to legal fees.

Section 21 of the *Employment Standards Act* provides that employers may not deduct anything from an employee's wages. The section states as follows.

Deductions

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| 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. |
| | (2) | An employer must not require an employee to pay any of the employer's business costs except as permitted by the regulations. |
| | (3) | Money required to be paid contrary to subsection (2) is deemed to be wages, whether or not the money is paid out of an employee's gratuities, and this Act applies to the recovery of those wages. |

Applying the vacation pay due to Kohonen to another debt Kohonen may have to Phillips is strictly prohibited under this provision of the *Act*.

CONCLUSION

There is no evidence to support the appeal. The Determination is therefore confirmed.

ORDER

Pursuant to section 115 of the Act, I order that the Determination in this matter, dated February 15, 2002 is confirmed.

April D. Katz
Adjudicator
Employment Standards Tribunal