

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





DECISION

SUBMISSIONS:

Roger Phillips	on behalf of R. Phillips & Associates International Ltd.
Bernie Gifford	on behalf of the Director of Employment Standards

OVERVIEW

R. Phillips & Associates International Ltd. ('Phillips') employed Keijo Kohonen ('Kohonen') as a skilled tradesman from March 24, 1997 until June 1, 2001. Kohonen complained to the Director of Employment Standards ('Director') that he was not paid regularly and was not paid at the rate he was promised. Based on the evidence available from Phillips and Kohonen the Director found that Phillips owed Kohonen \$915.20 in vacation pay. Phillips does not dispute the money is owed but argues the money should be applied to a debt Kohonen owes to Phillips for legal fees.

This appeal proceeded by written submissions.

ISSUE

- 1. Does Phillips owe Kohonen vacation pay?
- 2. Can any amount owed by Phillips to Kohonen be applied to legal fees paid by Phillips on behalf of Kohonen?

ARGUMENT

Phillips' submission is that Kohonen had a substance abuse problem, which made him attend work on an irregular basis. Phillips argues Kohonen was paid for days he was absent due to his substance abuse and at the end of his employment period he claimed for lost wages. Phillips spent time and money trying to assist Kohonen with his problems. Phillips argues that any money due to Kohonen should be used to pay the \$2800 expended on legal fees for Kohonen.

The Director's Delegate submits that there was no evidence to support the claim that Kohonen was paid when he was absent. The payroll evidence from Phillips was for a limited period of Kohonen's employment and showed that no vacation pay was paid to Kohonen for the hours he worked. The Director argues any indebtedness from the employee to the employer does not relieve Phillips from the obligation to pay wages and vacation pay earned.

FACTS

Kohonen was employed as a skilled tradesman in Phillips' furniture making company. Kohonen was asked to join the company in 1999 at an hourly rate of \$22.00 plus bonuses based on quarterly sales. Kohonen was responsible for running the shop.

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

- 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 it 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