

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act

-by-

Sukhdev Singh Johal
Operating as S.S. Johal Trucking

(“Johal”)

-of two Determinations issued by-

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 96/530

DATE OF DECISION: November 12th, 1996

DECISION

OVERVIEW

Sukhdev Singh Johal, operating as S.S. Johal Trucking (“Johal”), has brought two separate appeals pursuant to section 112 of the Employment Standards Act (the “Act”) from Determination Nos. CDET 003794 and 003795 both issued by the Director of Employment Standards (the “Director”) on August 23rd, 1996. The Director determined that Johal owed former employee Robert J. Therrien (“Therrien”) the sum of \$539.68 (CDET 003794) and former employee Franciscus Feenstra (“Feenstra”) the sum of \$416.68 (CDET 003795). In each case, the former employees’ initial complaints, which were upheld by the Director, were for unpaid wages.

FACTS

Therrien commenced employment with Johal on February 13th, 1996; his employment ended on April 5th, 1996. Feenstra commenced employment with Johal Trucking on January 22nd, 1996; his employment ended on February 19th, 1996. Therrien quit, whereas Feenstra says he was fired.

Both employees signed identical “Driving Contracts” at the outset of their employment. These contracts provide for payment based on “40% commission of the total delivery charges received”. In the case of each employee, the employer acknowledged to the Director’s delegate that the wages were owing but were being withheld on account of damages allegedly caused to the employers’ trucks by the employees. In a letter to the Tribunal dated October 15th, 1996, Johal once again asserted that both Therrien and Feenstra caused damage to the employer’s trucks. In addition, Johal also says that both Feenstra and Therrien received cash advances that were to be deducted from their wages. No receipts or other evidence has been provided to corroborate this latter allegation.

ANALYSIS

Although each employee's Driving Contract provides that the employee will be responsible for damage caused to the employer's machinery, this is not a matter for consideration under the Act.

Section 21(1) of the Act provides that "...an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages *for any purpose* (emphasis added). Section 21(2) states that an employer must not require an employee to pay any of the employer's business costs (except as permitted by regulation). Section 22 of the Act provides that an employer must honour an employee's written assignment of wages for certain purposes, none of which is relevant here. In my view, if Johal wishes to pursue Therrien and Feenstra for damages that may have been sustained to Johal's trucks (or for any other claims), Johal must do so by way of a separate civil action. An employer is not entitled to engage in a form of "self-help" by simply withholding wages as a set-off for a claim that has yet to be proven in a court of competent jurisdiction.

Parenthetically, I would note that the Driving Contracts state that they have been "approved by Labour Standard Branch". I seriously doubt that the *Employment Standards Branch* has approved these employment contracts. That being the case, Johal is strongly advised to cease and desist from making such a false representation on the drivers' contracts.

ORDER

Pursuant to section 115 of the *Act*, I order that Determination Nos. CDET 003794 and 003795 be confirmed as issued in the amounts of \$539.68 and \$416.68, respectively, together with whatever further interest may have accrued pursuant to section 88 of the Act since the issuance of the Determinations.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal