

**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 -

GERRY PETERS MASONRY LTD.  
("Peters")

- of a Determination issued by -

THE DIRECTOR OF EMPLOYMENT STANDARDS  
(the "Director")

**ADJUDICATOR:** Ian Lawson

**FILE NO.:** 97/340

**DATE OF DECISION:** July 17, 1997

## DECISION

### OVERVIEW

This is an appeal by Gerry Peters Masonry Ltd. ("Peters") pursuant to section 112 of the *Employment Standards Act* (the "Act"). The appeal is from a Determination dated April 8, 1997 issued by R. Corrigan as a delegate of the Director of Employment Standards (the "Director"). The Determination required Peters to pay \$551.72 to Clinton Howarth ("Howarth"), an employee from whose wages this sum of money was deducted on account of damage to Peters's property.

Peters filed an appeal on May 1, 1997. The appeal is now decided without an oral hearing, on the basis of written submissions and the record before the Tribunal.

### FACTS

Peters is a masonry contracting business and required its employee Howarth to operate a company truck. Howarth was involved in a minor collision with some equipment at a work site, causing damage to the truck which the parties agree to be in the amount of \$550.00. Peters and Howarth had some discussion about this damage, and Peters alleges an agreement was reached between them whereby this sum of money could be deducted from Howarth's wages.

In support of the appeal, Peters has provided three typewritten letters apparently from Howarth, purporting to grant authority for the deductions from Howarth's wages. It is not clear to me whether these documents were put before the Director's delegate; I assume for the purpose of this appeal that they were not. None of the letters bears a date or Mr. Howarth's signature. One letter is simply a demand by Mr. Howarth to receive his pay; the second requests a receipt for the repairs to the truck and contains the following sentences:

"Also, I am willing to pay you \$200 now, \$200 on the next cheque, and the remainder on the following one. I frankly cannot afford the full amount out of the up coming cheques."

The third letter makes a similar proposal, but suggests Peters could make repairs to the truck after these sums of money had been paid by Howarth.

It appears that Howarth's employment with Peters came to an end, although the record does not indicate how that happened. In any event, the sum of \$550.00 was deducted from the wages owed to Howarth for his final pay period. Peters does not advance any other evidence of Howarth's alleged authorization for the deductions.

**ISSUE TO BE DECIDED**

This appeal requires me to decide whether the employer properly withheld the sum of money deducted from Howarth's final pay.

**ANALYSIS**

Section 21(1) of the *Act* contains a very clear prohibition against the deduction from or withholding of an employee's wages for any purpose not permitted by the *Act* or any other enactment. One acceptable form of deduction from wages is a written assignment for specified purposes pursuant to Section 22 of the *Act*. The letters from Howarth advanced by Peters do not, however, amount to a written assignment of wages. Not only are the letters mere proposals to settle the matter, but they relate to none of the specified purposes for which assignments may be made under the *Act*.

Section 21(2) of the *Act* contains another clear prohibition: an employer must not require an employee to pay any of the employer's business costs except as permitted by the *Regulation*. There are no provisions in the *Employment Standards Regulation*, B.C. Reg. 396/95, which allow an employer such as Peters to require employees to pay the cost to repair vehicles or equipment damaged in the course of employment.

I therefore find that the deduction of \$550.00 from Howarth's wages is contrary to section 21 of the *Act* and was not authorized in any proper manner by Howarth himself.

**ORDER**

After carefully considering the evidence and argument, I find that the Determination dated April 8, 1997 is correct and the appeal should be dismissed.

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed.

**Ian Lawson**  
**Adjudicator**  
**Employment Standards Tribunal**