

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 -

Fraser Valley Disposal Ltd.
("Fraser Valley")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE NO.: 97/276

DATE OF HEARING: July 14, 1997

DATE OF DECISION: July 29, 1997

DECISION

OVERVIEW

The appeal is by Fraser Valley Disposal Ltd. (“Fraser Valley”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) against a Determination of the Director of Employment Standards (the “Director”) dated March 27, 1997. In the Determination it is found that Mark Fisher is entitled to compensation for length of service and a refund on moneys deducted from his pay in contravention of section 21 of the *Act*.

APPEARANCES

Jalal Jaffer	Counsel for Fraser Valley
Paul Moore	Owner of Fraser Valley Disposal
Debbie Wright	Witness
Darcy Pilfold	Witness
Bob de Boer	Witness
Bruce Harris	Witness
Mark D. Fisher	On His Own Behalf

ISSUES TO BE DECIDED

At issue is whether or not Fraser Valley had just cause to terminate the employment of Fisher. Fraser Valley argues that Fisher was fired for failing to adjust brakes, a practice which put public safety at risk and was contrary to company rules. Fisher argues that he was fired before he had a chance to adjust his brakes, and that he was fired, not for a failure to adjust brakes, but either because of his questioning of a deduction on his pay cheque, or because of union organizing.

At issue is the matter of whether or not Fraser Valley could deduct moneys for a social fund from Fischer’s pay. Fraser Valley argues that the deductions are voluntary and that Fisher gave written consent for the deductions. Fisher says that paying into the social fund was compulsory.

FACTS

Mark Fisher began work as a driver for Fraser Valley Disposal on August 8, 1995. His last day of work was September 13, 1996.

During the period of Fisher's employment, \$10 was deducted from each of his pay cheques. The money went into a fund called the "social fund". The money in that fund was used for flowers, company barbecues, fishing derbies and other group outings. With each pay cheque, employees sign a form indicating that they agree with the amount paid and all deductions. Fisher regularly signed that form. At the top of the form are the words "Please do not sign if you feel there is a discrepancy with your pay".

At some point in the midst of his employment, Fisher explored the idea that employees might join a union. He talked to other employees and he contacted the International Union of Operating Engineers. Bob de Boer, Fraser Valley's mechanic, confirms that Fisher spoke to him about forming a union but says that he told Fisher that he was not interested. Bruce Harris states that Fisher never mentioned a union to him. There is no hard evidence that Fisher spoke to anyone else about a union. I conclude that the idea died some time ago through a lack of interest.

Late in the afternoon of September 13, 1996, Fisher drove his truck back to Fraser Valley from a dump site which is nearby. I am presented with two somewhat different versions of what happened next but there is a certain amount of agreement and some matters are for other reasons clear. That Fisher did not adjust the brakes of his truck on company premises that afternoon is clear, there is agreement on that. Fisher's argument is that he was fired before he had a chance to adjust them. There is no argument that it is company policy that all drivers are to adjust their brakes at the end of each work day and that it is to be done in the company's yard. Records show that Fisher picked up his pay cheque and that \$21.80 was deducted from his pay. The parties are in agreement that the deduction was for an air gauge. It is clear that Moore fired Fisher during the course of discussing some matter out in the yard, again there is agreement on that. At the time of the firing, Fisher's truck was not parked where he normally would park it at the end of a day but elsewhere in the yard, that is the uncontradicted testimony of both Fisher and de Boer.

Moore and Fisher give very different accounts of the conversation that led to Fisher's termination. Moore says that he asked Fisher why he didn't adjust his brakes, was told that the brakes had been adjusted, was asked by Fisher why he should do it again, and that he fired Fisher because he knew full well that Fisher did not adjust his brakes and because a failure to adjust brakes puts public safety at risk. As Fisher presents matters, his conversation with Moore was all about the deduction for the air gauge, which he wanted removed because he already owned an air gauge. Fisher made no suggestion to the Director's delegate that he may have been fired for union organizing but he now suspects that he was fired for that reason. But knowing exactly what was said is not necessary for deciding either of the two matters that are before me.

ANALYSIS

The matter of the deductions that an employer can make from an employee's pay is the subject of sections 21 and 22 of the *Act*. Sections 21 and 22 are as follows, the emphasis is mine:

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.*

22. (1) ***An employer must honour an employee's written assignment of wages***

(a) *to a trade union in accordance with the Labour Relations Code;*

(b) *to a charitable or other organization, or a pension or superannuation or other plan, if the amounts assigned are deductible for income tax purposes under the Income Tax Act (Canada),*

(c) *to a person to whom the employee is required under a maintenance order, as defined in the Family Maintenance Enforcement Act, to pay maintenance,*

(d) *to an insurance company for insurance or medical or dental coverage, and*

(e) ***for a purpose authorized under subsection (2).***

(2) ***The director may authorize an assignment of wages for a purpose that the director considers is for the employee's benefit.***

(3) *An employer must honour an assignment of wages authorized by a collective agreement.*

(4) *An employer may honour an employee's written assignment of wages to meet a credit obligation.*

The matter of whether the contributions to the social fund were of a voluntary or involuntary nature does not matter to the Tribunal, nor does the matter of whether the employee gives some sort of written consent. What matters is whether the Director has authorized the deduction. The Director may authorize the deduction under s. 22 (2) where she considers the deduction to be for the employee's benefit. The Director did not do that. As such, Fraser Valley must now reimburse Fisher for all moneys deducted from his pay as contributions to the company social fund.

Fraser Valley argues that it had just cause to terminate Fisher. The onus is on the employer to show just cause.

The Tribunal has held that a single act of a most serious nature can cause such damage to the employment relationship that there is just cause for an employee's termination. In my view, where an employee can be reasonably expected to perform work, deliberately fails to do so, and there are particularly or potentially grave consequences to fellow workers or the public, immediate dismissal may be justified. Furthermore, I am satisfied that it is entirely reasonable for an employer to expect drivers of trucks like that driven by Fisher to adjust their brakes on some regular basis, and sooner if that is what the truck requires. And I am satisfied that a failure to adjust brakes on a truck of that sort may have potentially grave consequences for the general public and co-workers. But I am unable to find just cause. Fraser Valley does not show that Fisher was not adjusting his brakes such that he was putting the safety of the public and his fellow workers at risk.

Fraser Valley does not say that Fisher was not adjusting his brakes but only that he was did not adjust them on company premises. He was fired for breaking a rule. In my view a single breaking of Fraser Valley's rule does not present it with just cause for immediate termination. But as matters are presented to me, Fraser Valley fails even to show me that Fisher was about to leave for the day, when fired, without first having adjusted his brakes as the rule requires; or that he was about to leave and that his not adjusting brakes was deliberate. The evidence is that he had not parked his truck in its usual spot for the night at the time of firing. That tells me that he was not finished for the day. It has not been made clear to me that Fisher had no intention of adjusting his brakes.

I agree with the Director's delegate, Fraser Valley is unable to show that it has just cause for the termination of Fisher's employment.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination dated March 27, 1997 be confirmed.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal

LDC:lc