Employment Standards TRIBUNAL

An appeal

\- by -

Port Browning Marina Resort Ltd.
("the Marina")

\- 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: Lorne D. Collingwood

FILE No.: 2002/281

DATE OF DECISION: August 20, 2002

Employment Standards Tribunal
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British Columbia

DECISION

OVERVIEW

Port Browning Marina Resort Ltd. (I will use "the Marina" and "the employer" for ease of reference.) has appealed, pursuant to section 112 of the *Employment Standards Act* ("the *Act*"), a Determination issued by a delegate of the Director of Employment Standards (the "Director") on April 30, 2002. The Determination orders the Marina to pay Wayne Reeves $357.13 in wages, vacation pay and interest included.

The Marina deducted $345.38 from the employee's pay on belief that Mr. Reeves purchased food and beverages in that amount from the Marina's bar and café. The Determination is that the deduction is not allowed by the *Act* as there is not a written assignment of wages to allow it and that cash advances for food and beverages are in any event not allowed by section 20 of the *Act*.

The appeal is that the employer should be allowed to deduct $345.38 from the employee's pay because the employee paid for that amount of food and drink by way of draws which were to be against his future earnings. I have found that there are written assignments of wages which, in total, authorise the deduction of $98.63, not $345.38. I have also found that the Marina may deduct that $98.63.

This case has been decided on the basis of written submissions.

ISSUES

The issue is whether the employer is or is not entitled to deduct for food and drink purchases which were made by the employee. Underlying that issue, is the matter of whether there are or are not written assignments of wages to meet credit obligations that total $345.38.

What I must ultimately decide is whether it is or is not shown by the Appellant that the Determination ought to be varied or cancelled, or a matter(s) referred back to the Director, for reason of an error or errors in fact or law.

FACTS

The Marina employed Wayne Reeves for two weeks in August of 2001.

Reeves was not paid in food and beverages. He purchased food and beverages from the Marina. But unlike the common garden variety of customer, the employee did not pay for his purchases with cash or by credit or debit card. Marina employees may pay for food and drink by way of a draw against future wages and Mr. Reeves chose to do just that.

When the Marina's customers ask for their bill, they are presented with a bill of sale that shows the items purchased, the price of each item, and the total amount of the bill. In the event that the customer is an employee and he or she chooses to pay for food or drink by way of a draw, a second statement is produced. This second statement indicates that the amount of the bill is being paid by way of a draw. The word "draw" is printed on the statement, right beside the amount that is to be tendered.

As matters are presented to me, I am shown that Reeves gave written authorisation to deduct the amount of four separate food and drink purchases. There are receipts in the amount of the draw. Three are signed. One has been initialled by him. The total amount of these four purchases is $98.63.

I am satisfied that in signing and initialling bills of sale as he did, it is unlikely that Mr. Reeves was simply acknowledging the fact that he had received food and drink. He had no reason to do that. I have no doubt, as it is so very likely, that the reason that he signed or initialled bills of sale as he did is to acknowledge a decision to pay for certain food and beverages by way of a draw against pay.

I am shown other bills which appear to indicate that $98.63 may not be the full extent of Mr. Reeves' purchases. He has not signed or initialled any of these other bills but the words "draw Wayne" have been written on the bills. I am told that that was done by the server.

ANALYSIS

An employer may not withhold, deduct or require payment of any portion of an employee's wages for any purpose except those permitted by the *Act*.

> **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.

An employer may deduct the amount of a credit obligation but the employee must first provide a written assignment of wages to meet the credit obligation.

> **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.**

I am satisfied that the employee has given the necessary written consent for deductions totalling $98.63. He could have paid in cash or by credit or debit card but he did not. He chose to pay by way of a draw. In signing and initialling statements as he did, statements which specifically make note of the amount of the credit obligation and the fact that payment was to be by way of a draw, I am satisfied that he acted to provide the Marina with four written assignments of wages to meet four different credit obligations.

The Marina is entitled to deduct $98.63 from his pay and that is all. The Marina may not deduct $345.38 from his pay. There is not a written assignment of wages except as noted above.

I realize that the employer believes that the total amount purchased is not $98.63 but $345.38 and that it believes that it has written assignments to show that. The employer does not, however, submit clear evidence of purchases outside of the above noted four. And, even if I were to accept that the employee did in fact make another $246.75 in purchases, it would not follow from that fact that the employer is then entitled to deduct that as well. It is not enough that an employer can show that a purchase was made. The employee must give some form of written consent to deduction of the specific amount of a credit obligation from his or her pay. Absent that written authorisation, the employer is not entitled to deduct the amount of the purchase from wages for reason of section 21 of the *Act*.

The delegate has decided that Reeves has not been paid in Canadian currency as section 20 of the *Act* requires. In doing so, he ignored *Wood (cob Whistler Waterproofing Co.*), BCEST No. D184/97, an early decision by the Tribunal and he relies on *Heichman (cob Blue Ridge Ranch)*, BCEST No. D120/99, *Richardson*, BCEST No. D120/99, and *Port Browning Marina Resort Ltd*., BCEST No. D494/99. Only *Wood* is on point.

Section 20 requires that all wages be paid in Canadian currency. That is the case here. It is not the case that the employee is being paid in kind, as was the case in the seminal decision on payments in kind, namely, *Skeena Valley Guru Nanak Brotherhood Society*, BCEST No. D361/00. Cash advances are allowed by the *Act*: That is how commission salespersons are commonly paid. In my view, the draws which are of interest herein are allowed by the *Act* in much the same way as room and board is considered wages in *Sophie Investments Inc*., BCEST No. 527/97, a decision which, I note, was considered and given further support by the *Skeena Valley* decision.

I order that the Determination be varied. It is not $357.13 that the Marina must pay Wayne Reeves but $246.75 ($345.38 – 98.63) plus all interest due under section 88 of the *Act*.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination which is against Port Browning Marina Resort Ltd., in favour of Wayne Reeves, and dated April 30, 2002, be varied. The Marina must pay the employee $246.75 plus interest pursuant to section 88 of the *Act*.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal