

EMPLOYMENT STANDARDS TRIBUNAL

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

Employment Standards Act S.B.C. 1995, C.38

-by-

Craftsman Collision (6th Ave) Ltd.
("Craftsman")

-of a Determination issued by-

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	Lorna A. Pawluk
FILE No.:	96/629
DATE OF DECISION:	December 24, 1996

DECISION

OVERVIEW

This is an appeal by Craftsman, pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against Determinations CDET 004211, DDET 000460 and DDET 000461 issued by the Director of Employment Standards (the "Director") on October 4, 1996. The Director determined that Craftsman contravened Section 21 of the *Act* by deducting \$120.00 from the last pay cheque of Brian Moody ("Moody"). Determination 004211 orders Craftsman to repay Moody \$120.00, plus \$7.97 interest. Determination 000460 orders payment of this sum by John Longhurst, Director/ Officer of Craftsman. Determination 000461 orders payment of this sum by William S. Hatswell, Director/Officer of Craftsman. David B. Cant, Vice-President of Finance for Craftsman, filed an appeal on October 25, 199 asking that the Determination be cancelled.

The appeal proceeded by way of written submissions.

ISSUE TO BE DECIDED

The issue is whether Craftsman withheld \$120.00 from the last paycheque of Moody in violation of Section 21 of the *Act*.

FACTS

Moody was employed as a painter by Craftsman for five weeks. The Director's delegate determined that Craftsman withheld \$120.00 from Moody's last paycheque, saying that Moody owed \$65.00 to the "coffee truck lady"; \$20.00 to a co-worker, Doug; \$20.00 to another co-worker Bill, and \$15.00 to a third co-worker, Pedro. The delegate found this to contravene Section 21 of the *Act*, saying that the section authorized only certain deductions and this deduction was not included in the list. She added: "Good gestures, no matter how well intentioned cannot be made with someone else's money, or as in this case with their wages."

In support of the appeal, Craftsman presented a document, "Petty Cash Voucher", dated September 7, 1995 and with "Brian Moody" below the space left for a signature. (It is unclear whether that is Mr. Moody's signature.) It indicates that the "Coffee Truck" was owed \$58.00; Doug, \$20.00; Bill, \$20.00; and Pedro \$15.00.

Moody admits that he owes money to the coffee truck lady and to former co-workers and acknowledges his obligation to repay the money. However, he disputes the employer's right, under the *Act*, to withhold these sums from his last paycheque. In his response to Craftsman's appeal, he says that the only reason he

signed the authorization was that he was told that he would not be given holiday pay or separation papers.

ANALYSIS

Section 21 of the *Act* permits an employer to withhold the wages of employees in limited circumstances:

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. (emphasis added)

That section permits the withholding of wages where there is explicit statutory authority, from either a provincial or federal enactment. Section 22 outlines assignments which are permissible under the *Employment Standards Act*:

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.

This case does not involve payment to a union or charity, nor is it for payment of maintenance obligations or insurance premiums. It is not a payment authorized by the Director under Section 22(2) or by a collective agreement under Section 22(3). Most appropriate is Section 22(4) which says that an employer "may" honour an employee's written assignment "to meet a credit obligation". Thus, if the sums owed to the coffee lady and co-workers by Moody are a "credit obligation",

Section 22(4) provides Craftsman with a potential basis for its actions. What, then, is a "credit obligation" as it is intended by that section?

The *Employment Standards Act* is remedial legislation; according to Section 8 of the *Interpretation Act* R.S.B.C. 1979, c.206 it must be given a fair, large and liberal interpretation which best ensures the attainment of its objects. The purpose of the *Act* is to give employees wage protection not available to them at common law. (Helping Hands Agency Ltd. and Director of Employment Standards, (December 1, 1995) Vancouver CA018751, B.C.C.A.) Thus, exceptions to the general prohibition must be strictly construed; it will be an exceptional case where a "credit obligation" can form the basis of an assignment of wages. In this case, Moody acknowledges a moral obligation to repay the money owed to the "coffee lady" and to former co-workers but this is insufficient for Craftsman to rely on Section 22(4). I specifically decline to determine whether this provision prohibits an assignment unless there has been a judgment for the debt or a garnishee summons, but I find that the circumstances of this case fall short of that.

Mr. Moody says that the assignment is invalid because it was gained by coercion, i.e. he would not receive his holiday pay or separation papers. In light of my conclusion above on Section 22(4), it is unnecessary for me to determine whether Moody was "coerced" or whether it affected the validity of the "assignment".

ORDER

Pursuant to Section 122 of the *Act*, I confirm Determinations CDET 004211, DDET 000460 and DDET 000461.

Lorna A. Pawluk
Adjudicator
Employment Standards Tribunal