

BCEST #D384/98

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 -

Daryl Evans
operating as D. Evans Trucking
("Evans Trucking" or the "Employer")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE NO.: 98/366

DECISION DATE: September 1, 1998

ANALYSIS AND DECISION

Section 77 of the *Act* provides:

77. If an investigation is conducted, the director must make reasonable efforts to give a person under investigation an opportunity to respond.

In this case, the delegate did not respond to the Employer's contact via the telephone but rendered the Determination based on the information from the Employee. The delegate does not dispute the facts alleged by the Employer. In my view, therefore, the delegate failed to make reasonable attempts to permit the Employer to respond.

Having said that, the facts stated by the Employer clearly indicates that he contravened Section 21 of the *Act* which proscribes deductions not required or permitted by the Act or other provincial or federal legislation. Section 21 of the *Act* provides (in part):

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 cost except as permitted by the regulations.

There is no argument that the deduction is permitted or required under Section 21(1). As such, the deduction is not permitted. Moreover, the Employer does not dispute that the parts were for his truck. While I have sympathy for the Employer, who may have suffered a loss due to the conduct of the employee, the Employer may not deduct the cost of parts for his truck. To do so would permit the Employer to pass the cost of doing business onto the employee. However, the statute is clear.

In the result, the appeal must fail.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter, dated May 21,

1998 be confirmed in the amount of \$265.59 together with such interest as may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

Ib Skov Petersen

Adjudicator

Employment Standards Tribunal