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

DECISION

APPEARANCES/SUBMISSIONS

Mr. Daryl Evans

on behalf of the Employer

OVERVIEW

This is an appeal by the Employer pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination of the Director of Employment Standards (the "Director") issued on May 21, 1998 which determined that the Employer was liable for unauthorized to Mr. Wayne E. Matthews (the "Employee"). The Director's delegate found that Matthews was owed \$265.59.

Briefly, the delegate found that the Employer had deducted \$255.42 from Matthews' final pay cheque for a "Halogen Hi-Lo S/Beam Headlight plus taxes and H.D. Battery and Wire Brush plus taxes". The Determination further states:

"I have completed my investigation into these allegations. The investigation revealed that you are no longer operating D. Evans Trucking and that the telephone has been disconnected. I received no response to the letter sent to you on March 25, 1998. I have been advised by others, in the trucking industry, that you are still in the area. Since you have not responded to the allegations, the calculations are based on the information provided by Mr. Matthews."

The Employer disputes the Determination. First, with respect to the merits of the matter, the Employer agrees that the amount was deducted from Matthews' wages. The Employer explains that Matthews charged the purchase of the items to its account with a supplier without authority. The items were for the Employer's truck. However, the batteries were covered by warranty and, as I understand it, could have been replaced by the manufacturer without cost to the Employer. The Employer did not know of the purchase until after Matthews' resignation. Matthew did not return the wire brush and the batteries which were replaced, apparently required, to allow the Employer to receive money back from the manufacturer. Second, the Employer complains that he did not have an opportunity to respond to the complaint. The Employer states that he received the March 25 letter and responded by telephone to the telephone numbers listed in the letter and left messages for the delegate who did not contact the Employer again. The Employer states that his address has been unchanged since 1990 and the cellular telephone number has been the same since July 1997.

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ISSUE TO BE DECIDED

The issue is whether the Tribunal should vary, confirm or cancel the Determination.

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,

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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**