

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 -

Maaco Auto Painting and Bodyworks
("Maaco")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE NOS.: 98/440

DATE OF DECISION: September 10, 1998

DECISION

OVERVIEW

This is an appeal by Maaco Auto Painting and Bodyworks ("Maaco") pursuant to Section 112 of the *Employment Standards Act* (the "Act") against a Determination on June 15, 1998 by a delegate of the Director of Employment Standards (the "Director"). The Determination found that Maaco had improperly withheld wages owed to a former employee, Ron Dutt ("Dutt"). Maaco's appeal argued that Dutt had agreed to the charge against his wages.

ISSUE TO BE DECIDED

The issue in this case is whether Maaco was entitled to withhold a portion of Dutt's wages.

FACTS

Dutt was employed by Maaco in its automobile painting and body work operation from June 13 until August 8, 1997. Although the Determination stated that Dutt resigned, Dutt's stated to the Tribunal that he was terminated. His final pay cheque had a deduction of \$375.66. Maaco produced an authorization for the deduction in the form of a work order with Dutt's signature dated August 14, 1997. The authorization was in the form of a work order for damage to a customer's vehicle. Dutt alleged in his statement to the Tribunal that he did not in fact sign the work order and that the signature was not his. Maaco produced a "shop policy" also bearing Dutt's signature dated August 2, 1997, stating that employees accept "full financial responsibility for costs of repairs of damages to any vehicle or equipment resulting from negligence or carelessness. . . ." Dutt stated that he had signed the authorization as a condition of receiving his final pay cheque from Maaco. He had worked for Maaco approximately four weeks, and the incident leading to the deduction occurred in the third week of his employment. Furthermore, Dutt alleged that the incident in question was caused by Maaco failing to provide proper space for customers' cars.

ANALYSIS

Maaco argued that Dutt had authorized the deduction in question, which was an advance of wages for costs incurred several weeks before his termination. Dutt had not denied his

responsibility for the amount withheld. According to Maaco, Dutt had signed the authorization. The deduction fell within company policy. Dutt denied that he had signed the authorization freely. The work order in question was dated approximately one week after Dutt ceased to be an employee of Maaco.

Section 21 of the *Act* states:

- 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.

Maaco's actions fall squarely under Section 21(2) of the *Act*. Damage to goods, whether caused by negligence or not, are a cost of business to an employer. The prohibition on deducting an employer's business costs is absolute. An employee cannot sign away that right, even on a voluntary basis, which may not have happened in this case. Nor is an employer able to override the conditions of the *Act* by the imposition of a company policy. Finally, there is no exemption for negligence, as Maaco claims.

ORDER

For these reasons, the Determination of June 15, 1998 is confirmed as issued in the amount of \$393.37, plus any further interest that has accrued, pursuant to Section 88 of the *Act*, since the Determination was issued.

Mark Thompson
Adjudicator
Employment Standards Tribunal