

**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 -

Nu-Style Exteriors Inc.  
("Nu-Style")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 98/538

**DATE OF DECISION:** September 21, 1998

## DECISION

### OVERVIEW

This is an appeal by Nu-Style Exteriors Inc. (“Nu-Style”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated July 23, 1998 issued by a delegate of the Director of Employment Standards (the “Director”). Nu-Style alleges that the delegate of the Director erred in the Determination by concluding that Yuriy Fedorov (“Fedorov”) was owed wages and vacation pay. The Director’s delegate concluded that Nu-Style had contravened Sections 21(1) (2) and 58 (3) of the *Act* and ordered Nu-Style to pay the amount of **\$560.85** to Fedorov.

### ISSUES TO BE DECIDED

The issues to be decided in this appeal are whether Fedorov is owed wages and vacation pay.

### FACTS

The following facts are not in dispute:

- Fedorov was employed by Nu-Style as a labourer;
- The period for which payment of wages is in dispute is the period commencing January 15 to 28, 1998;
- Fedorov worked 25.5 hours during the period in dispute;

Nu-Style submits that the work performed by Fedorov was not acceptable and that in order to receive payment for the work performed Fedorov was required to complete the job to the satisfaction of the owner of the premises. Nu-Style further submits that Fedorov was given ample opportunity to correct the job however Fedorov refused to do so. Nu-Style was then required to pay for another worker to complete the job Fedorov had done unsatisfactorily. Nu-Style finally submits that they should not have to pay Fedorov for a job poorly done which had to be re-done by another employee.

The delegate of the Director investigated Fedorov’s complaint and concluded that Fedorov was entitled to wages and vacation pay. The delegate of the Director subsequently issued the Determination dated July 23, 1998.

## ANALYSIS

There is no dispute by Nu-Style that Fedorov was not paid his wages for the period January 15 - 28, 1998 and his accrued annual vacation pay. Nu-Style disputes their obligation to pay these as Nu-Style states the work performed by Fedorov was unsatisfactory and Fedorov refused to correct his work when given the opportunity to do so.

The obligations of an employer are set forth in the *Act* and Section 4 of the *Act* stipulates that the standards of the *Act* are minimum standards which may not be waived. Section 4 provides:

*“Section 4, Requirements of this Act cannot be waived*

*4. The requirements of this Act or the regulations are minimum requirements, and an agreement to waive any of those requirements is of no effect, subject to sections 43, 49, 61 and 69.”*

Even if Fedorov had agreed that he would not be paid until corrections to his work had been done, and there is no evidence of any such agreement, that agreement would be, pursuant to Section 4 (*supra*) of no effect.

The requirement for an employer to pay annual vacation pay is set forth in Section 58 of the *Act* which provides:

*“Section 58, Vacation pay*

*58. (1) An employer must pay an employee the following amount of vacation pay:*

*(a) after 5 calendar days of employment, at least 4% of the employee's total wages during the year of employment entitling the employee to the vacation pay;*

*(b) after 5 consecutive years of employment, at least 6% of the employee's total wages during the year of employment entitling the employee to the vacation pay.*

*(2) Vacation pay must be paid to an employee*

*(a) at least 7 days before the beginning of the employee's annual vacation, or*

*(b) on the employee's scheduled pay days, if agreed by the employer and the employee or by collective agreement.*

*(3) Any vacation pay an employee is entitled to when the employment terminates must be paid to the employee at the time set by section 18 for paying wages.”*

With respect to the actions of Nu-Style in deducting the cost of correcting the deficiencies, this is contrary to Section 21 of the *Act* which provides:

*“Section 21, Deductions*

*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 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.”*

The cost of correcting deficiencies is a business cost and pursuant to Section 21 (2) may not be deducted from an employee's wages.

Based on the information provided, I conclude that Fedorov is owed wages and accrued annual vacation pay. I further conclude that Nu-Style contravened the *Act* by not paying wages and accrued annual vacation pay to Fedorov upon his termination. I further conclude that Nu-Style contravened the *Act* by deducting from Fedorov the cost of correcting deficiencies.

Upon review of the calculations performed by the delegate of the Director and set forth in the Determination, I am satisfied that those calculations are correct.

The appeal by Nu-Style is therefore dismissed.

## **ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated July 23, 1998 be confirmed in the amount of \$ **560.85** together with whatever further interest may have accrued, pursuant to Section 88 of the *Act*, since the date of the issuance.

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**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**