

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: David Stevenson

FILE NO.: 98/515

DATE OF DECISION: September 25, 1998

DECISION

OVERVIEW

This is an appeal, pursuant to Section 112 of the *Employment Standards Act* (the “Act”), by Maaco Auto Painting and Bodyworks (“Maaco”) of a Determination which was issued on July 21, 1998 by a delegate of the Director of Employment Standards (the “Director”). In that Determination the Director found Maaco had contravened Sections 18(1), 21(1) and 21(2) of the *Act* in respect of the employment of Paulo Marques (“Marques”) and, pursuant to Section 79 of the *Act*, ordered Maaco to pay an amount of \$351.67.

ISSUE TO BE DECIDED

The issue is whether the Director was wrong to conclude that Maaco was not entitled to require Marques to pay the cost of three training courses taken by the employee during his employment with Maaco.

FACTS

The facts that are relevant to the issue are few.

Marques was employed by Maaco as a third year Autobody Apprentice from July 1996 until his employment was terminated on May 9, 1997. While employed, Marques took three training courses. In respect of each of the courses, he signed a document headed “Agreement”, which stated:

I, *Paulo Marques*, agree to refund MAACO AUTO PAINTING & BODYWORKS all training costs paid on my behalf if I leave my employment in less than one year after I have completed the course.

All costs will be agreed upon before training begins.

Marques’ employment was terminated less than one year after he took the courses. When Marques was terminated, Maaco deducted the cost of the training courses from wages owed. The Director concluded the courses taken by Marques were part of Maaco’s business costs and Marques could not be required to pay for them.

ANALYSIS

Section 21 of the *Act* reads:

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 part of the employer's business costs except as permitted by this 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 argues the cost of the training courses taken by Marques are not part of the costs of doing business. Maaco relies on a number of points to support that assertion:

the training taken by Marques was not needed by Maaco as the skills he acquired through that training were skills already possessed by several other employees and also by the owner/operator, Mr. Rene Messier;

Marques would have received the same skills in his final apprenticeship year at no cost to Maaco;

the courses were optional for apprentices, although if Marques were a licenced autobody technician, he would be required to obtain 8 to 16 hours of auxiliary training;

the training received by Marques is portable and therefore an asset of the employee, not the employer;

upgrading courses are a cost to the employee of staying employed, because without them, any technician, including Marques, is unemployable.

I do not accept the suggestion that the payment by Maaco for the training courses taken by Marques were unrelated to Maaco's business. Common sense dictates that an employer allows an employee to upgrade their skills because an employee who is more knowledgeable and more skilled is generally felt to be a greater asset than one who is not. Also, it is apparent that Maaco viewed the payment for the courses as a cost of keeping

skilled employees. In the appeal, Maaco says the agreement “helps an employee to pay his optional/mandatory training cost by rewarding his loyalty”. In other words, the training cost was paid by Maaco to establish a sense of loyalty in the employee and was forgiven after a year to reward that loyalty. The fact this objective was not realized in the case of Marques does not affect a conclusion the payment for the courses had a business purpose.

My comments should not be taken to suggest a business purpose must be present before the Tribunal will find a “business cost”. This appeal was argued primarily on the basis that the cost of training should not be considered a “business cost” because it is not necessary or needed for the business of Maaco. My comments only dismiss that argument on the facts of this case.

Maaco has not shown the Director was wrong in concluding the cost of the training courses should, in this case, be treated as part of Maaco’s business costs. . It is clear from the terms of the document signed by Marques that Maaco would have borne the cost of the training if Marques had continued to be employed for more than a year after he completed the course.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated June 9, 1998 be confirmed in the amount of \$351.67, together with whatever interest has accrued since the date of issuance pursuant to Section 88 of the *Act*.

David Stevenson
Adjudicator
Employment Standards Tribunal