

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 -

M. A. Concrete Ltd.
(the "Employer")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE NO.: 98/430

DATE OF DECISION: October 13, 1998

DECISION

OVERVIEW

This is an appeal by M. A. Concrete Ltd. (the "Employer") pursuant to Section 112 of the *Employment Standards Act* (the "Act") against a Determination issued on June 10, 1998 by a delegate of the Director of Employment Standards (the "Director"). The Determination found that the Employer had deducted the cost of equipment from the pay of a former employee David Kabatoff ("Kabatoff"). The basis of the appeal was that Kabatoff was not an employee of the Employer.

ISSUE TO BE DECIDED

The issue to be decided in this case is whether Kabatoff was an employee of the Employer.

FACTS

Kabatoff was employed as a site foreman by the Employer commencing September 1, 1996. From September 1, 1996 until September 15, 1997, he was paid a monthly salary. Kabatoff wrote to the president of the Employer on August 5, 1997 requested that he be "shifted" to the position of a raker based on an hourly rate. His letter to the Employer did not mention resignation. From September 16, 1997 to November 28, 1997, he was paid \$20 per hour and worked on a part-time basis, when the employer needed his services. The Employer stated that Kabatoff's duties changed substantially after September 15, 1997, and another person was hired to assume his former position. The Employer made statutory deductions from Kabatoff's wages during the period he worked part-time.

The Determination found that the Employer had deducted the costs of a pager, a truck window and a light from Kabatoff's pay cheque, for a total amount of \$375.00. The Determination ordered the Employer to pay that amount, plus interest from November 28, 1997.

ANALYSIS

Section 21(2) of the Act states clearly that an employer must not require an employee to pay any of its business costs. The items stated in the Determination fall in the category of business costs. The Employer argued that Kabatoff was a contractor after September 15, 1997.

The Employer presented no evidence that Kabatoff was a contractor at any time. Contractors typically have a independence from an employer's operations, have the opportunity of making a profit or suffering a loss from their work and often own tools or equipment. None of these conditions existed in this case. Accepting the Employer's

assertions that Kabatoff's duties changed and that he went from full time to part time and that he was regarded as working on a temporary basis, Kabatoff was still an employee, as defined in the Act. The Act defines an employee as "a person an employer allows, directly or indirectly, to perform work normally performed by an employee." The Act does not distinguish between part-time and full-time employees under this definition, nor between temporary and permanent employees. The Employer acknowledged that it made statutory deductions from Kabatoff's pay during the period he was working on a part-time basis.

ORDER

For these reasons, pursuant to section 115 of the Employment Standards Act the Delegate's Determination of June 10, 1998 is confirmed. The Employer is required to pay the amount in the Determination, plus interest accrued since the date under section 88 of the Act.

Mark Thompson
Adjudicator
Employment Standards Tribunal