

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 -

Ultra Clean Building Maintenance Ltd.
("Ultra")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

Adjudicator: Hans Suhr

File No.: 97/630

Date of Decision: September 30, 1997

DECISION

OVERVIEW

This is an appeal by Ultra Clean Building Maintenance Ltd. (“Ultra”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated July 25, 1997 issued by a delegate of the Director of Employment Standards (the “Director”). Ultra alleges that the delegate of the Director erred in the Determination by concluding that Hannah Pierce (“Pierce”) was owed wages in the amount of \$2,308.19 plus interest for a total of \$2,385.77.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Pierce is owed wages?

FACTS

Pierce was employed by Ultra as an Area Manager in the Kelowna area. While Ultra initially maintained that Pierce was self-employed, in their submission accompanying the appeal to the Tribunal, Ultra states “...we accept the Determination regarding her employment.”

Ultra states that Pierce had cancelled the contract at the beginning of September 1996 and furthermore, Pierce did not perform any work after September 13, 1996. Ultra also states that Pierce was paid \$500.00 as “severance pay” in September 1996. Ultra further states that Pierce was to pay Ultra a \$10.00 charge for leads not pursued up to July 31, 1996 and \$15.00 per lead thereafter, therefore Pierce owes Ultra the amount of \$3,155.00.

Ultra further states that Pierce has not returned a fax machine belonging to Ultra which has a value of \$450.00 which is also owed by Pierce.

Ultra finally states that remittances to Revenue Canada in the amount of \$274.75 for C.P.P. and E.I. should be deducted from the total amount determined to be owing.

Pierce provided copies of invoices sent to clients and copies of transfer sheets for the period October 16 - November 15, 1996.

ANALYSIS

The burden of establishing that the delegate of the Director erred on the Determination rests with Ultra.

Ultra has not provided any evidence to substantiate their contention that the contract of employment with Pierce was cancelled by Pierce in early September 1996. Documentary evidence clearly indicates that Pierce continued to provide labour and services to Ultra until mid- November 1996.

Ultra has not provided any evidence to prove that 'severance pay' was paid to Pierce in September 1996. I note that under the terms of the contract of employment in effect at that time, no 'severance pay' would be payable if Pierce, as Ultra claims, had in fact cancelled the employment contract.

With respect to Ultra's contention that remittances to Revenue Canada be deducted from any wages owing to Pierce, I note that Ultra did not provide any evidence of payment to Revenue Canada, Ultra merely provided a copy of the invoice from Revenue Canada. Furthermore, the amount of wages determined by the delegate of the Director to be owing are the 'gross wages' and are subject to statutory deductions. Those statutory deductions *made on behalf of Pierce and proven to have been remitted to Revenue Canada* form a part of the 'gross wages' amount.

With respect to Ultra's contention that Pierce owes them \$3,155.00 for leads not pursued, this manner of offset or clawing back wages from an employee to cover the costs of the employer's business is contrary to the provisions of Section 21 of the *Act*, which states:

Section 21, Deductions

(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. (emphasis added)

With respect to Ultra's claim that Pierce is retaining a fax machine that is the property of Ultra, that matter is **not** within the jurisdiction of this Tribunal. Ultra is free to pursue other avenues to secure the return of their property.

Ultra has not established that the delegate of the Director erred in the Determination dated July 25, 1997.

I conclude therefore, based on the evidence provided, that Pierce is entitled to wages. I am satisfied that the amount of **\$2,385.77** as calculated by the delegate of the Director and stated in the Determination is correct in all respects.

For all of the above reasons, the appeal by Ultra is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated July 25, 1997 be confirmed in all respects.

Hans Suhr
Adjudicator
Employment Standards Tribunal

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