

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 -

E.V. Towmasters Services Ltd.
("Towmasters")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 97/679

DATE OF DECISION: October 2, 1997

DECISION

OVERVIEW

This is an appeal by E.V. Towmasters Services Ltd. (“Towmasters”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination which was issued on August 18, 1997 by a delegate of the Director of Employment Standards. The Determination found that Lloyd Klunder, a former employee of Towmasters, was not entitled to overtime wages, annual vacation pay nor compensation for length of service but also found that he was entitled to “...a refund of wages unlawfully withheld in violation of Section 21(2) of the *Employment Standards Act*. The amount of wages plus interest to which Mr. Klunder was found to be entitled was \$514.51 (\$505.37 plus interest).

Towmasters’ appeal asserts that the Determination is wrong because it had Mr. Klunder’s written authorization “...to recoup monies paid out at the request of L. Klunder.”

I have reviewed and considered the Determination and Towmasters’ appeal submission in making this Decision. The Tribunal did not receive a submission from Mr. Klunder.

ISSUE TO BE DECIDED

Did Towmasters contravene Section 21(2) of the *Act* by withholding wages in the amount of \$505.37 from Lloyd Klunder?

FACTS

The Director’s delegate found that Towmasters contravened Section 21(2) of the *Act* by withholding the following amounts from Mr. Klunder’s wages:

I.C.B.C. Claim	\$ 249.77
Sunnyside Autobody	\$ 186.05
Invoice #T635	<u>\$ 69.55</u>
	\$ 505.37

The Determination includes a quite lengthy set of reasons for the various findings which the Director’s delegate made, including the following reasons that are particularly relevant to this appeal:

The employer required Klunder to pay \$249.77 for damages caused to a customer’s vehicle. This amount had been charged to the employer by I.C.B.C. per claim #H130697.1. This is a cost of doing business and violates Section 21(2) of the *Act*.

The employer charged Klunder \$186.05 for damages pertaining to an incident with Sunnyside Autobody and \$69.55 for damages re: Invoice T635. These charges total \$255.60, which was deducted from Klunder's vacation pay. This is in violation of Section 21(2).

In its appeal, Towmasters submits that Mr. Klunder should be held responsible for his business dealings and that his written authorization permitting deductions to be made from his wages should be enforceable. It submits, in support of its appeal, a copy of an invoice dated October 29, 1996 from the Insurance Corporation of British Columbia which required Towmasters to pay \$249.77 for the cost of repairs to a vehicle. According to Towmasters' appeal submission, "(t)he company paid the \$249.77 at his request and he gave the company a letter authorizing a deduction of \$50.00 off his pay cheques until paid in full." Towmasters submitted a copy of a hand-written note, the full text of which is reproduced below, without any amendments:

Dec. 16.96.

I Lloyd R.L. Klunder, do hereby authorize E.V. Towmasters Services, and grant permission thereof, to commence deductions from my bi-weekly pay cheques, in the amount not to exceed \$50.00 (fifty dollar) increments, until such account is paid for in full.

RL Klunder

According to Towmasters' submission the Sunnyside Autobody invoice for \$186.05 resulted from work which was done for Mr. Klunder under a verbal agreement that he would "...work off the monies owed in labour for the body shop..." Towmasters also submits that Mr. Klunder "...had the audacity to let it be billed to this company when he had no authorization to do so."

Towmasters' appeal submission makes no mention of Invoice #T635 in the amount of \$69.55.

ANALYSIS

Section 21 of the *Act* states:

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.

Section 22(4) of the *Act* states:

22. (4) An employer may honour an employee's written assignment of wages to meet a credit obligation.

Section 4 of the *Act* states:

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.

Towmasters' appeal does not dispute the finding made by the Director's delegate that the I.C.B.C. invoice for \$249.77 resulted from damage caused by Mr. Klunder to a customer's vehicle. It also offers nothing to oppose the finding that the damage was the employer's business cost. Rather, it seeks to rely on a hand-written note dated December 126, 1996 to authorize the deductions it made from Mr. Klunder's wages. There are several reasons why Towmasters cannot rely on the December 16th document. First, as noted above, Section 4 of the *Act* prohibits any agreement that seeks to waive any requirements of the *Act* or the *Regulations*. Second, the provisions of Section 21(2) prohibit an employer from requiring an employee to pay any of the employer's business costs. In addition, even if the ICBC invoice were not a "business cost" within the meaning of Section 21(2) of the *Act*, I am not satisfied that the Dec 16th document constitutes a "written assignment of wages to meet a credit obligation." I say that because the document does not state on its face the amount of the credit obligation nor to whom the amount is allegedly owed. The document certainly is not a clear statement by the signatory (Klunder) acknowledging that he is indebted to Towmasters in the amount of \$249.77. Thus, the December 16th document is unenforceable under this *Act*.

Towmasters provided no submission nor any evidence to the Tribunal concerning Invoice #T635. Thus, I have no ground on which to disturb the finding made by the Director's delegate.

With respect to the \$186.05 invoice from Sunnyside Autobody, Towmasters offers only vague assertions, without any tangible evidence to support its submission, that it had been sent an invoice that related to work performed on behalf of Klunder and not on its behalf. I see no reason to conclude that Towmasters should be permitted to deduct the amount of the invoice from Klunder's wages in the absence of "...a written assignment of wages to meet a credit obligation" (It should be remembered that in Towmasters' own submission the Dec 16th document pertained only to the I.C.B.C. invoice for \$249.77).

ORDER

I order, under Section 115 of the *Act*, that the Determination be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC/nc