

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 -

Frances Lasalle operating Pasta Trading Post
("Pasta Trading")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 98/610

DATE OF DECISION: October 14, 1998

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Frances Lasalle operating as Pasta Trading Post (“Pasta Trading”) against a Determination which was issued on August 28, 1998 by a delegate of the Director of Employment Standards. The Director’s delegate found that Pasta Trading made an unauthorized deduction from the wages of Jose A. Origo Zamora (“Zamora”). Pasta Trading argued that Zamora had agreed to the deduction.

ISSUE TO BE DECIDED

The issue in this case is whether Pasta Trading is entitled to deduct a portion of Zamora’s wages.

FACTS

Zamora was employed by Pasta Trading as a Chef from April 3, 1998 to May 22, 1998. His pay cheque for the period May 1, 1998 to May 14, 1998 had a deduction of \$475.00.

On August 28, 1998, the Director’s delegate issued a Determination in which she found the deduction was not permitted as no written assignment was given by Zamora.

In its appeal, Pasta Trading acknowledges that it deducted \$475.00 from Zamora’s wages without a written assignment. It claims that Zamora verbally agreed to the deduction of \$475.00 which was for May rent.

ANALYSIS

The provisions of the *Act* which are relevant to this appeal are Sections 21 and 22(4).

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 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* reads:

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

The *Act* prohibits an employer from deducting wages from an employee for any reason except as permitted by the *Act* or any other provincial or federal legislation. The *Act* permits an employer to make a deduction if the employee provides a written assignment to meet a credit obligation. There was no written assignment in this case. As such, the deduction is not permitted. Pasta Trading has clearly contravened the *Act* and as a result its appeal must fail.

ORDER

Pursuant to Section 115 of the *Act* I order that the Determination dated August 28, 1998 be confirmed together with such interest as may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

Norma Edelman
Registrar
Employment Standards Tribunal