

An appeal

- by -

Sandy's Furniture Ltd.

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: Fernanda Martins

FILE No.: 2001/480

DATE OF DECISION: September 12, 2001

DECISION

OVERVIEW

This is an appeal by Sandy's Furniture Ltd. (the "Appellant"), pursuant to Section 112 of the *Employment Standards Act* (the "*Act*") of a Determination issued by the Director of Employment Standards (the "Director") on June 5, 2001.

The Director determined that the Appellant was in contravention of Sections 21(1), and 18 (2) of the *Act* and ordered the Appellant to pay Tara Nikulak (the "Respondent") \$796.88.

This appeal was decided based on the written submissions received from the Appellant and the Director.

ISSUE

The issue to be decided in this case is whether the Appellant is entitled to withhold the payment of wages to an employee who has been accused of theft from the Appellant.

ARGUMENT

The Appellant set out on the appeal form:

THE DETERMINATION IS FLAWED. THE EMPLOYEE HAS "PAID" HERSELF IN EXCESS OF WHAT SHE WAS OWED. THE EMPLOYEE HAS RECOURSE AGAINST US IF IT IS FELT THAT THIS IS A FRIVOULOUS [sic] CHARGE OF THEFT. IT IS A VIOLATION OF "NATURAL LAW" TO REQUIRE THE VICTIM OF A CRIME TO COMPONSATE [sic] THE CRIMMINAL [sic].

THE FACTS

The Director investigated a complaint made by the Respondent that she was owed her final pay cheque in the amount of \$783.00 consisting of regular wages pursuant to Section 18(2) of the *Act* and vacation entitlement pursuant to Section 58 of the *Act*. She terminated her employment with the Appellant after having worked there from December 26, 2000 until March 8, 2001.

The Appellant acknowledged that the Respondent did not receive her final pay cheque and claimed that she had already received more than the wages owing to her when she cashed the Appellant's petty cash cheque. The Director contacted the RCMP and was advised that a "theft under \$5000" charge against the Respondent was being contemplated.

ANALYSIS

Section 18 of the Act provides as follows:

If employment is terminated

18 (2) *An employer must pay all wages owing to an employee within 6 days after the employee terminates the employment.*

Section 21 of the Act provides as follows:

Deductions

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.*

The Director provided the Appellant with the Tribunal decision *566264 B.C. Ltd. operating as X-citement Video VIII and Kaytel Video* BC EST #D531/99 where the Tribunal found:

...There may well seem to be an inequity or unfairness in requiring an employer to pay wages to an employee who has stolen money from them: *Park Hotel (Edmonton) Ltd.* BC EST#D539/99; *445864 BC Inc.* BC EST #D329/99. However, the Tribunal has consistently decided that the obligation to pay wages is statutory and neither the director nor the Tribunal has the discretion to withhold wages legitimately owing to an employee.

The wages owing must be paid as required by the Act and the employer must look to other remedies to recover money allegedly owed by the employee. The employer may, for example, seek restitution in the criminal courts or pursue a remedy in civil court. There is no jurisdiction in the *Act* to grant the remedy sought by the employer in this case.

It follows from the foregoing that the Director made no error in determining that the Appellant is required to pay the Respondent her wages.

ORDER

Pursuant to Section 115 of the *Act* the Determination dated June 5, 2001 is confirmed.

Fernanda Martins
Adjudicator
Employment Standards Tribunal