

**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 -

Lam Pet Enterprises Ltd. operating The Dolphin Pub  
("Dolphin")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 97/624

**DATE OF HEARING:** October 7, 1997

**DATE OF DECISION:** October 23, 1997

**DECISION**

**APPEARANCES**

Trudy Lamont	on behalf of Lam Pet Enterprises Ltd. op. The Dolphin Pub
George Lamont	on behalf of Lam Pet Enterprises Ltd. op. The Dolphin Pub
Peter Lamont	on behalf of Lam Pet Enterprises Ltd. op. The Dolphin Pub
Elizabeth Mason	on behalf of Lam Pet Enterprises Ltd. op. The Dolphin Pub
Jasmine Simpson	on her own behalf
Susan Battison	on behalf of Jasmine Simpson

**OVERVIEW**

This is an appeal by Lam Pet Enterprises Ltd. operating The Dolphin Pub (“Dolphin”), under Section 112 of the *Employment Standards Act* (the “Act”), against 2 Determinations dated July 31, 1997 issued by a delegate of the Director of Employment Standards (the “Director”). Dolphin alleges that the delegate of the Director erred in the first Determination by concluding that Jasmine Simpson (“Simpson”) was owed wages in the total amount of \$579.61 for illegal deductions and compensation for length of service. Dolphin further alleges that the delegate of the Director erred in issuing the second Determination for a penalty in the amount of \$0.00.

**ISSUES TO BE DECIDED**

The issues to be decided in this appeal are:

1. Did Dolphin make illegal deductions from Samson’s wages ?
2. Does Dolphin owe compensation for length of service to Simpson ?
3. Was the Determination in the penalty amount of \$0.00 appropriately issued by the delegate of the Director ?

**FACTS**

Simpson was employed by Dolphin as a clerk from June 3, 1995 to February 23, 1997.

Simpson's pay statements indicated that amounts noted as "advances" were deducted from her pay.

Simpson's employment was terminated by Dolphin on February 23, 1997.

Trudy Lamont ("T. Lamont"), George Lamont("G. Lamont"), Peter Lamont ("P. Lamont"), and Elizabeth Mason ("Mason") testified on behalf of Dolphin.

Simpson and Susan Battison ("Battison") testified on behalf of Simpson.

I received a great deal of evidence, both written and verbal, however I will only reproduce the relevant evidence.

T. Lamont testified and stated that:

- she was one of the owners of Dolphin;
- she kept a diary of warnings given to Simpson;
- she provided copies of warnings to Simpson;
- she issued 2 cheques to Simpson for advances in the amount of \$50.00 each;
- she observed on the security video tapes that Simpson had a number of attitude problems;
- she doesn't recall any specific dates of incidents of alleged poor behaviour by Simpson;
- Simpson stopped by the office at approximately 11:00 p.m. on February 23, 1997 to advise Lamont "If you don't give me more hours, you'll be sorry."
- she discussed this incident with the other managers and it was decided to terminate Simpson;
- she felt that just cause existed for the termination.

In response to cross examination by Simpson, T. Lamont stated:

- she did not terminate Simpson despite the ongoing attitude problems as she felt that Simpson was still in training;
- some of the advances given were in cash;
- Simpson and all other employees were repeatedly told that they were not permitted to convert their tips to bills from the till;
- P. Lamont prepared the Record of Employment for Simpson;
- Simpson was initially provided with severance pay;
- Simpson's mother returned the severance pay several days later with the explanation that Simpson had been advised to not accept it because she had filed a complaint.

In response to questions from the Tribunal, T. Lamont stated:

- Simpson was given a raise in August 1996 in order to motivate her;
- she doesn't recall a letter of reference provided to Simpson in August 1996;
- Simpson was given a Christmas bonus in December 1995 and December 1996 because all employees were given one;
- the till tapes noted amounts as shortages which corresponded to the deductions noted on Simpson's pay statements as "advances";
- the manager on each shift also had access to the till utilized by Simpson;
- the warning letters provided were issued as a result of incidents reported to her by other employees, managers and customers.

Elizabeth Mason testified and stated that:

- she never really dealt with Simpson, merely heard from other people that she had been rude;
- she wrote the letter of reference for Simpson as she had requested one and felt that perhaps Simpson would be encouraged to find another job;
- doesn't recall any of the warnings issued to Simpson;

In response to cross examination by Simpson, Mason stated that:

- she understood that staff were permitted to convert tips at the till;
- she had seen staff 'borrowing' money from the till for cigarettes but had not seen Simpson do this.

In response to questions from the Tribunal, Mason stated that:

- she was not involved in any decision to give Simpson a raise in August 1996;
- she did not keep any record of the incidents referred to in the diary provided by T. Lamont;
- as a manager, she did have access to a till at the same time as an employee;
- it was not her responsibility keep track of the shortages incurred by the staff;
- employees would be advised of the amount of the shortages and asked to pay for it;
- the warning letter she wrote with respect to Simpson's behaviour, was not provided to Simpson.

P. Lamont testified and stated that:

- on one Sunday he observed Simpson with her head laying on the counter as a customer was coming into the premises;
- he doesn't recall any specific date for the above incident;
- he was aware that Simpson had been rude to a customer.

In response to cross examination by Simpson, P. Lamont stated:

- he believed that employees were told to either take their tips home or only exchange them in the presence of a manager;
- he has worked using an employees till on occasion.

In response to questions from the Tribunal, P. Lamont stated:

- he did not take any immediate action with respect to the incident in which Simpson was rude to a customer;
- he was involved in the decision to terminate Simpson;
- he would tell the general manager about incidents regarding Simpson;
- he did not keep a diary of those incidents;
- he would advise employees of shortages and ask the employee to make it up;
- he confirmed that some of the notations on the till tapes re: shortages were in his handwriting;
- he was aware that Simpson got a raise in August 1996;
- he was aware of the letter of reference provided to Simpson although he was not involved in the discussions leading up to it;
- all employees go a Christmas bonus if they deserved it.

Simpson testified and stated that:

- she had never received any of the warning letters T. Lamont provided to the delegate of the Director;
- she acknowledged that she received the 2 cheques as advances in the amount of \$50.00;
- she received a raise in August 1996 because of her work performance;
- she asked for the letter of reference as she was looking for another job which would provide more hours;
- she was required to pay for shortages;
- she was never told that her continued employment was in jeopardy;
- she denies the incidents related in the letters provided by T. Lamont.

## **ANALYSIS**

The nature of deductions that an employer is permitted to take from an employee is set forth in 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.*

Dolphin acknowledges their practice of requiring employees to pay for shortages in the till.

I conclude that Dolphin took deductions from Simpson's wages contrary to Section 21 of the *Act*.

Based on the evidence provided and on the balance of probabilities, I conclude that Dolphin had not established that just cause exists for the termination of Simpson. The fact that Dolphin gave Simpson a raise in August 1996, a glowing letter of reference and also gave her Christmas bonuses in 1995 and again in 1996 certainly seems to be at odds with their contention that Simpson was a problem employee. There was no evidence to support the numerous allegations contained in the warning letters.

Based on the evidence and on the balance of probabilities, I conclude that the Determination in the penalty amount of \$0.00 was appropriately issued by the delegate of the Director. Dolphin has contravened Section 21 of the *Act* by engaging in the practice of requiring employees to pay for shortages.

## **ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated July 31, 1997 in the amount of \$579.61 be confirmed in all respects. I further order that the Determination dated July 31, 1997 in the penalty amount of \$0.00 be confirmed in all respects.

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**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**