

**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 -

The Roundup Grill  
(the "Appellant")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** E. Casey McCabe

**FILE No.:** 2000/568

**DATE OF DECISION:** December 8, 2000

**DECISION**

**APPEARANCES**

William and Margaret Sirianni	for the employer
Sherry Belcourt	for herself
Robert W. Joyce	for the Director of Employment Standards

**OVERVIEW**

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by William and Margaret Sirianni d.b.a. The Roundup Grill (the “employer”) from a Determination dated July 28, 2000 which found the employer liable in the amount of \$360.00 in wages plus interest.

**ISSUE TO BE DECIDED**

1. Did the employer make an unauthorized deduction from the complainant’s wages?

**FACTS**

The Roundup Grill is a restaurant operated by William and Margaret Sirianni which is located in the Dawson Hotel, Dawson Creek, B.C. The complainant, Sherry Belcourt, worked as a cook/waitress for the period of April 18, 2000 to June 16, 2000.

The owner of the Dawson Hotel is Mr. Jim Gibb. Prior to the complainant’s termination of her employment Mr. Gibb had given her \$360.00. The complainant did not repay this money to Mr. Gibb. On June 12, 2000, Mr. Gibb wrote The Roundup Grill informing the employer that their employee:

“ . . . S. Belcourt owes an overdue amount to J. Gibb of \$360.00 which was to be paid 3 weeks ago and no attempt has been made to repay the loan. We ask you to please withhold that amount of funds from her pay cheque and forward to me.”

Yours truly,

J. Gibb

On June 19, 2000 The Roundup Grill issued a cheque in the amount of \$360.00 to Mr. Gibb. On the same day Ms. Belcourt filed a complaint with the Employments Standards Branch alleging that her employer had made an unauthorized deduction from her pay.

The employer argues that the payment to the complainant was an advance which was made on an understanding that the monies would be deducted from her pay cheque. The employer acknowledges that the money was paid to the complainant by Mr. Gibb rather than the employer. It is the employer's position that Mr. Gibb gave the money to the complainant out of compassion for her personal circumstances at the time. The employer further argues that because the complainant had told Mr. Gibb that the repayment of the loan would be "taken off her pay" the \$360.00 paid to Mr. Gibb became an advance rather than a debt.

It does not appear from the evidence that there was a direct conversation between the complainant and her employer regarding the payment to Mr. Gibb. Rather the evidence indicates that the payment to Mr. Gibb was made in compliance with the letter and after Ms. Belcourt had terminated her employment. It is evident that the complainant did not make a written authorization for this deduction.

Sections 21 and 22 of the *Employment Standards Act* apply in this case. Those sections read:

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.*
22. (1) *An employer must honour an employee's written assignment of wages*
  - (a) *to a trade union in accordance with the Labour Relations Code,*
  - (b) *to a charitable or other organization, or a pension or superannuation or other plan, if the amounts assigned are deductible for income tax purposes under the Income Tax Act (Canada),*
  - (c) *to a person to whom the employee is required under a maintenance order, as defined in the Family Maintenance Enforcement Act, to pay maintenance,*
  - (d) *to an insurance company for insurance or medical or dental coverage, and*
  - (e) *for a purpose authorized under subsection (2).*

- (2) *The director may authorize an assignment of wages for a purpose that the director considers is for the employee's benefit.*
- (3) *An employer must honour an assignment of wages authorized by a collective agreement.*
- (4) *An employer must honour an employee's written assignment of wages to meet a credit obligation.*

I do not accept the employer's argument that the \$360.00 paid to Mr. Gibb was in fact an advance to the Complainant. It is clear that the money given by Mr. Gibb to the Complainant constituted a debt owed to Mr. Gibb.

Section 21 of the *Act* prohibits an employer from withholding, deducting or requiring payment, whether directly or indirectly, of all or part of an employee's wages for any purpose except that permitted by the *Act* or another statute in British Columbia or Canada. Examples of other statutes that permit a deduction from an employee's pay would include the *Income Tax Act*, the *Canada Pension Plan Act*, the *Employment Insurance Act* and monies due under a court order pursuant to the *Court Order Enforcement Act*. However, an employer under Section 22 (4) of the *Act* may honour an employee's written assignment of wages to meet a credit obligation.

The complainant in this case did not make the required written assignment of wages. The *Act* states that an assignment of wages must be written not oral. A third party, such as Mr. Gibb, cannot make the written assignment for the employee even if the employee said it would be taken off her pay. Section 22(4) requires the employee to make the assignment rather than a third party. If a debt is owed that creditor has civil remedies which it can pursue. Section 21(1) specifically prohibits deducting alleged debts from an employee's wages without the creditor having obtained an order for payment or the debtor employee having made a written assignment.

The employer has made an unauthorized deduction from the complainant's wages. The complainant is entitled to payment with interest of that unauthorized deduction. There is no power in this Tribunal to provide a remedy to the employer for the error it has made by paying the monies to the third party or to correct perceptions of unjust enrichment. (Re: *Old Country Restaurant* BC EST #D561/98)

## **ORDER**

The Determination dated July 28, 2000 is confirmed.

***E. Casey McCabe***

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**E. Casey McCabe**  
**Adjudicator**  
**Employment Standards Tribunal**

ECM/bls