

An appeal

- by -

Punjab Driving Schools Inc.

- 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:** John M. Orr

**FILE No.:** 2001/541

**DATE OF DECISION:** December 4, 2001

## DECISION

### OVERVIEW

This is an appeal by Punjab Driving Schools Inc. (“PDS”) pursuant to section 112 of the *Employment Standards Act* (“the *Act*”) from a determination dated June 29, 2001 by the Director of Employment Standards (“the Director”).

The Director found that PDS operated driving schools and owed wages to an employee, Anchaljit Chahal (“Chahal”), in the amount of \$692.85. The employer did not dispute the amount of wages but alleged that Chahal owed money to PDS for driver training she had taken prior to becoming an instructor. It is also claimed that she misappropriated some fees paid to her by customers. PDS claims that the wages were withheld to repay the money owed to the company by Chahal.

The Director found that under the *Act* an employer is prohibited from withholding or deducting wages unless required to do so by the legislation and that there were no circumstances in this case to justify the withholding of wages.

PDS appeals the determination. The Tribunal previously decided that it was appropriate that this appeal be decided on the basis of a written decision.

PDS has provided substantial information to support the allegation that there was money owing for driver training and that there may have been misappropriation of fees from customers. However, PDS has not provided any legal basis to justify the withholding of wages. The determination is confirmed.

### FACTS AND ANALYSIS

Anchaljit Chahal (“Chahal”) took a drivers training course from PDS and then became employed as an instructor. PDS alleges that she arranged for the training fees to be deducted from her pay cheques. She was employed from January 5 to February 28, 2001. She earned gross wages in the amount of \$1,330.00 but was paid only \$705.00. PDS withheld Chahal’s wages to pay for the training and to recover some customer fees that Chahal had not deposited to the bank.

The Director took no position as to whether or not Chahal owed money to PDS as alleged because even if the allegation were true there was no legal right for PDS to withhold wages earned. The Director referred to section 17 (1) of the *Act* that provides that an employer must pay to an employee within 8 days all wages earned by an employee in a pay period. The Director also

noted that Section 18 (2) requires all wages to be paid within 6 days of termination. Section 21 also provides that an employer may not make deductions from an employee's wages except as required by law. The section 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 employer has made a case that Chahal owed them money and has commenced a claim in the Provincial Court but has not shown any legal justification for the withholding of wages to collect the money owing.

Under section 22 an employer may deduct money from wages under certain very specific and narrow circumstances. The only relevant subsection provides as follows:

**Assignments**

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

If in fact Chahal received her driving training "on credit" it is possible that a credit obligation had been created. The *Act* provides, as a very limited exception to the provisions of section 21, that an employee could provide a written assignment of wages to pay a credit obligation. This exception should be interpreted narrowly and the requirement for a 'written assignment' must be applied.

There is no evidence of any written authorization given by Chahal for the deduction or withholding of her wages for any reason. There is no document provided that could be considered a 'written assignment'. Under these circumstances the employer must continue to seek a remedy for the unpaid fees in another forum.

The onus is on the appellant to persuade the Tribunal that the determination is wrong. In this case the appellant has presented no substantial legal basis upon which the withholding of wages could be justified. I am satisfied that the determination is correct and therefore should be confirmed.

**ORDER**

Pursuant to section 115 of the *Act* I order that the Determination dated June 29, 2001 is confirmed.

---

**John M. Orr**  
**Adjudicator**  
**Employment Standards Tribunal**