Employment Standards TRIBUNAL

An appeal

- by -

Katherine Castro op/as Planet Hair
(the "Appellant")

- 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:** Wayne R. Carkner

**FILE No.:** 2001/719

**DATE OF DECISION:** December 6, 2001



British Columbia

# DECISION

This decision is based on written submissions submitted by Lorraine Castro, on behalf of Katherine Castro operating as Planet Hair (the "Appellant"), Anita Johnson (the "Respondent") and the Director of Employment Standards (the "Director").

## OVERVIEW

This is an appeal by Katherine Castro operating as Planet Hair pursuant to Section 112 of the *Employment Standards Act* (the *"Act"*) of a Determination issued by the Director on September 24, 2001.The Determination concluded that the Appellant, who operated a business which employed the Respondent as an esthetician, had contravened Section 21 of the *Act* for unauthorized payroll deductions. The Determination assessed a remedy of $423.61, including interest accrual pursuant to Section 88 of the *Act,* payable to the Respondent.

## ISSUES

1. Does a payment for a certification course constitute a cash advance?
2. Did the Respondent sign a proper authorization for payroll deductions?

## FACTS AND ANALYSIS

Though there are several disputes in the facts before this Tribunal, it is not necessary to hold an oral hearing to test these factual differences as they are not determinative in reaching a decision in this appeal.

The Appellant's position is that the Respondent approached the Appellant had requested to take a three-day course to become certified to perform body wraps. The Appellant asserts that there was also a one-day course and that if the Appellant wanted the employees to obtain certification, which she denies, she would have required the employees to take the one-day course due to cost factors. The Appellant maintains that it was the Respondent who wanted to take the course in order to obtain better employment opportunities in the future. The Appellant asserts that the Respondent requested her to set up the course, as she could not afford to pay the four hundred dollar course fee in one lump sum and asked for assistance. The Appellant states that two cheques were written on the business account to cover the cost of the course, a fifty dollar cheque for deposit on the course and a $350.00 cheque for the balance of the course costs. The Appellant stated that recovery of the monies was approved by the Respondent due to the signing of two authorizations for payroll deductions, one in June 2000 and one in November 2000. The Appellant maintains that the payment of the course was a loan and therefore constituted a cash advance to the Respondent. The deductions therefore were proper under the *Act.*

The Respondent's position was that the Appellant approached her and requested that she take the three-day course to allow the Appellant to be in a position to offer body wraps at the place of business (Planet Hair). She states that at no time was she aware she would have to pay for the course until she went to charge some products to her payroll deduction account and the bookkeeper informed her that this was not normally done when an employees had so much money charged against their accounts. This is when, the Respondent asserts, she became aware that the Appellant was going to make her pay for the course through payroll deductions. The Respondent states that as she needed her job at that time, she didn't pursue the issue other than a discussion with the Appellant. The Respondent further asserts that she signed the authorization for payroll deductions in November 2000 as it was requested as a requirement for bookkeeping purposes and she had already had the $400.00 deducted via payroll deduction at that time. It is noted that this Authorization was signed just prior to the Respondent terminating her employment with the Appellant. The Respondent also asserts that she never signed the June 2000 authorization and that the signature on that payroll deduction authorization form was not hers.

The Director took the position that as per the Appellant's assertion that the "monies in question were a cash advance" and that a "cash advance is a loan" the Appellant would have to identify in the payroll records the cash advanced to the Respondent. The Director stated that after reviewing the Appellant's payroll records no entry for a cash advance was listed in the records relating to the Respondent. The Director further states that if a $400.00 loan was to have been repaid through payroll deduction the Appellant would have to have a specific authorization outlining the terms of the loan and a specific deduction schedule. The Director points out that the "Authorization For Payroll Deduction" form does not refer to loans. The Director also refers to Section 21 (1) of the *Act:*

> 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.

I must concur with the Director. The authorization form relates to only four items:

- Advance on wages
- Equipment purchased for my own use for customers
- Clothing other than uniforms
- Any retail products for my own use

None of the foregoing has any relation to course fees for an employee. They relate specifically to cash advances and products of the business.

The reasoning of the Director in the Determination is logical. If the $400.00 was a cash advance it would be recorded as such in the payroll records. If a $400.00 loan was made to the Respondent then a specific agreement should have been signed identifying the amount of the loan with a signed payroll deduction authorization and an agreed to payment schedule.

## CONCLUSIONS

Regarding the signature on the June 2000 "Authorization For Payroll Deduction form", I have compared the Respondent's signature on the June 2000 document, the November 2000 document & the written submission from the Respondent. Though I am no expert on handwriting, it appears to me that the signatures on the November 2000 document and the written submission are the same. The June 2000 document seems to contain several distinct differences. However, as I am not an expert in this field I will not make a conclusive finding as to the authenticity of the signature on the June 2000 document as it is not necessary to do so to make final determination on this appeal.

I find that in the specific circumstances of these facts that the payment of the certification course fees does not constitute a cash advance and that a specific written authorization for payroll deduction was required to make the payroll deductions in dispute from the Respondent's payroll.

## ORDER

Pursuant to Section 115 of the *Act* I order that the Determination dated September 24,2001 be confirmed along with any additional interest accrual pursuant to Section 88 of the *Act*.

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**Wayne R. Carkner**
**Adjudicator**
**Employment Standards Tribunal**