

An appeal

- by -

Dan Foss Couriers (Island) Ltd.
("Dan Foss")

- 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: Norma Edelman

FILE No.: 2001/759

DATE OF DECISION: December 20, 2001

DECISION

OVERVIEW

This is an appeal by Dan Foss Couriers (Island) Ltd. ("Dan Foss") pursuant to Section 112 of the *Employment Standards Act* (the "*Act*") from a Determination issued by a delegate of the Director of Employment Standards on October 2, 2001. The delegate awarded Michael J. Cross ("Cross") the sum of \$947.72 representing wages, vacation pay and interest. Al Hasham ("Hasham"), the President of Dan Foss, appeals the Determination on the basis "...there should be no money owing to Mike Cross as he owes me more money that I owe him."

ISSUE TO BE DECIDED

Did the delegate err in determining that Dan Foss is not entitled to withhold wages from Cross?

FACTS

Cross worked for Dan Foss from March 2001 to May 31, 2001 at a rate of pay of \$11.00 per hour.

Dan Foss does not dispute that Cross is owed the amount of wages that are set out in the Determination. Hasham says that he will not pay Cross because Cross owes him rent. Hasham has made an application to the Residential Tenancy Office regarding the dispute. Hasham says that he wants the money that the company owes Cross to be held in trust until the matter with the Residential Tenancy Office has been finalized.

ANALYSIS

The burden is on the Appellant, in this case Dan Foss, to demonstrate that there is an error in the Determination such that I should vary or cancel the Determination. I find that the burden has not been met in this case.

Section 21 of the *Act* states:

- 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.

Section 22(4) of the *Act* states:

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

The mandatory language of Section 21 prohibits an employer from withholding wages from an employee for any purpose with some limited exceptions such as payroll deductions for CPP, EI and Income Tax. Rent is not one of these exceptions. Section 22(4) of the *Act* allows an employer to make deductions or withholdings from wages for a credit obligation if it receives a written assignment from the employee. If Cross had provided Hasham with a written authorization to make deductions or withholdings from his wages to meet a credit obligation, such as rent, then (in the absence of any evidence that Cross was coerced) it may be the case that the deduction or withholding by Hasham or Dan Foss would not be a violation of the *Act*. However, there is no written assignment in this case. Under, the *Act* an employer is not permitted to exercise a "self-help remedy" by withholding pay or making payroll deductions to satisfy an employer's claim against an employee. (see *550635 BC. Ltd. (c.o.b. Jack's Towing)* BCEST #D100/01).

Hasham wants the Tribunal to order that Cross's wages be held in trust pending a decision of the Residential Tenancy Office. Presumably, Hasham expects to be successful at the Residential Tenancy Office. It appears he further expects that following his success at the Residential Tenancy Office, the Tribunal will then offset Cross's claim against his claim. As I stated in an earlier decision (*New Pacific Limousine Service Inc.* BCEST #D054/96) I can find nothing in the *Act*, which gives the Tribunal the power to do what an employer is prohibited from doing under Section 21. The Tribunal cannot provide the kind of relief sought by Hasham. The action he has commenced against Cross is entirely separate and apart from the *Act*. Cross's entitlements under the *Act* cannot be deferred or offset by the Tribunal because of some other proceeding or order.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated October 2, 2001 be confirmed together with any further interest calculated pursuant to Section 88 of the *Act*.

Norma Edelman
Adjudicator
Employment Standards Tribunal