

IN THE MATTER OF A WAGE RECOVERY APPEAL UNDER DIVISION
XIV-PART III, SECTION 251.11 OF *THE CANADA LABOUR CODE*,
R.S.C. 1985, c. L-2

BETWEEN:

MOELLENBECK TRANSPORT LTD.,

APPELLANT,

AND:

DENNIS BRIAN D'AMOUR,

RESPONDENT.

REFEREE'S DECISION
May 6, 2015

T. F. (TED) KOSKIE, B.Sc., J.D.

Date of Hearing: December 1, 2014

Place of Hearing: Suite 3, 501 Gray Avenue, Saskatoon, SK

Representatives: Werner Moellenbeck for the Appellant, Moellenbeck Transport Ltd.

No one appearing for the Respondent, Dennis Brian D'Amour

TABLE OF CONTENTS

	Page
I. BACKGROUND	1
II. FACTS	2
III. DISPUTE	3
IV. DECISION	3
V. REASONS	4
A. ACT	4
B. ANALYSIS	5

I. BACKGROUND

[1] Dennis Brian D'Amour ("D'Amour") lodged a complaint¹ (the "Complaint") dated January 3, 2014, with Human Resources and Skills Development Canada, Labour Program, alleging that Moellenbeck Transport Ltd. ("Moellenbeck") took unauthorized deduction from his pay to which he was entitled under the provisions of the *Canada Labour Code*² (the "Code").

[2] The Investigator was of the view the Complaint of non-authorized deductions was well founded and issued a Payment Order³ (the "Order") on August 13, 2014.

[3] Moellenbeck appealed the Order on August 25, 2014.

[4] The Minister of Labour (Canada) appointed me to hear and determine the Appeal.

[5] I convened a telephone conference for November 7, 2014. Both parties attended and agreed to the hearing proceeding at Suite 3, 501 Gray Avenue, Saskatoon, Saskatchewan, for one day commencing at 10:00 a.m. on December 1, 2014. I confirmed the dates, time and place with the parties in advance of same.

[6] Werner Moellenbeck ("Werner") appeared on behalf of Moellenbeck at the scheduled date, time and place of the hearing. No one appeared for D'Amour. I proceeded to hear the Appeal.

¹Exhibit G-1, Complaint dated January 3, 2014

²R.S.C. 1985, c. L-2

³Exhibit G-2, Payment Order dated August 13, 2014

II. FACTS

[7] Moellenbeck is a small trucking company based in St. Gregor, Saskatchewan. It has four (4) trucks in its service—two (2) that it owns and two (2) through “lease operators.”

[8] D’Amour commenced employment—in a full time capacity—with Moellenbeck in April 2009. He was hired to operate a truck owned by Moellenbeck. He continued in that role until resigning in June 2013.

[9] Moellenbeck has a no smoking policy. Werner testified that policy came about because of, *inter alia*, the following reasons:

- a) trucks are very expensive—smoking has a negative effect on their value;
- b) many truck drivers are now non-smokers—they will not take on employment to drive in a truck that has the smell of smoke;
- c) often trucks are delivering to public places, such as grain to elevators—smoking operators run the risk of being banned from entering same; and
- d) the trucks are considered public service vehicles to which the public are invited—for example, periodically customers, such as farmers, will travel in the truck.

[10] Werner was D’Amour’s immediate supervisor. At the time of his first hiring, Werner instructed D’Amour to refrain from smoking inside any Moellenbeck vehicle.

[11] Werner discovered D’Amour had been smoking in a vehicle (the “Vehicle”) he

had been operating. He then advised D'Amour that he would need to pay for detailing the vehicle in which he had smoked. Werner told D'Amour that Moellenbeck would deduct that cost from his pay. D'Amour did not object.⁴ D'Amour did not provide a written authorization for the deduction.

[12] It is worthy of note that Moellenbeck did not discipline D'Amour for the smoking infraction. Werner testified that "apart from smoking and speeding," D'Amour did his job. He testified he added a "governor" that restricted the speed of the vehicle. He said that solved the speeding problem. It was his hope the requirement to pay the detailing costs would deter the smoking problem. Werner said he was doing his best to keep an otherwise good employee during a "labour shortage."

[13] Moellenbeck took the vehicle to Discovery Ford in Humboldt, Saskatchewan, for detailing. Te attended to same and billed Moellenbeck five hundred and twenty-nine dollars and nineteen cents (\$529.19). Moellenbeck deducted that sum from D'Amour's pay.

III. DISPUTE

[14] Simply stated, the issue here is whether Moellenbeck made an unauthorized deduction from D'Amour's pay.

IV. DECISION

[15] I dismiss Moellenbeck's appeal.

[16] I confirm the Order and direct that all funds currently held by the Receiver General of Canada—to a maximum of five hundred and twenty-nine dollars and

⁴It appears from Werner's testimony that D'Amour also did not agree. He was just silent.

nineteen cents (\$529.19), less the deductions permitted by sections 254.1(2)(a), (b) and (e) of the *Code*—be paid to D'Amour.

[17] I decline to order payment of costs in favour of either party.

V. REASONS

A. ACT

[18] The relevant provisions of the *Code* are:

Payment of wages

247. Except as otherwise provided by or under this Part, an employer shall

- (a) pay to any employee any wages to which the employee is entitled on the regular pay-day of the employee as established by the practice of the employer; and
- (b) pay any wages or other amounts to which the employee is entitled under this Part within thirty days from the time when the entitlement to the wages or other amounts arose.

...

Appeal

251.11 (1) A person who is affected by a payment order or a notice of unfounded complaint may appeal the inspector's decision to the Minister, in writing, within fifteen days after service of the order, the copy of the order, or the notice.

...

Appointment of referee

251.12(1) On receipt of an appeal, the Minister shall appoint any person that the Minister considers appropriate as a referee to hear and adjudicate on the appeal, and shall provide that person with

- (a) the payment order or the notice of unfounded complaint; and
- (b) the document that the appellant has submitted to the Minister under subsection 251.11(1).

Referee's decision

(4) The referee may make any order that is necessary to give effect to the referee's decision and, without limiting the generality of the foregoing, the referee may, by order,

- (a) confirm, rescind or vary, in whole or in part, the payment order or the notice of unfounded complaint;

- (b) direct payment to any specified person of any money held in trust by the Receiver General that relates to the appeal; and
- (c) award costs in the proceedings.

Order final

- (6) The referee's order is final and shall not be questioned or reviewed in any court.

...

Deductions

254.1(1) No employer shall make deductions from wages or other amounts due to an employee, except as permitted by or under this section.

- (2) the permitted deductions are
 - (a) those required by a federal or provincial Act or regulations made thereunder;
 - (b) those authorized by a court order or a collective agreement or other document signed by a trade union on behalf of the employee;
 - (c) amounts authorized in writing by the employee;
 - (d) overpayments of wages by the employer; and
 - (e) other amounts prescribed by regulation.
- (3) Notwithstanding paragraph (2)(c), no employer shall, pursuant to that paragraph, make a deduction in respect of damage to property, or loss of money or property, if any person other than the employee had access to the property or money in question.

B. ANALYSIS

[19] I believe that in *P. D. Brooks Transportation Services Ltd. v David Orange*, Referee Randy L. Levinson set out the appropriate manner in which I should consider this matter. He said:

The [employer] . . . has the onus upon it to establish that [the Inspector's] . . . Payment Order is incorrect. . . . The [employer] . . . can only lawfully make deductions from [an employee's] . . . wages according to the *Canada Labour Code*, R.S.C., 1985 c. L-2, as amended ("*Code*"). I must apply the *Code* as Parliament has intended. In section 254.1 of the *Code*, Parliament clearly expresses its intention regarding an employer's right to make a deduction from wages due to any employee. Section 254.1(1) of the *Code* provides that no employer shall make deductions from wages or other amounts due to an employee, except as permitted by or under this section. Section 254.1(2) of the *Code* then lists various permitted deductions including amounts authorized in writing by the employee.

[20] As stated by Referee Anne E. Bertrand in *Kline Construction Ltd. v Anthony Brewer*:

Section 254.1 therefore provides a general rule prohibiting deductions from wages or other amounts unless the employee has authorized the amounts of the deductions. The intention of the legislator is to limit deductions from employees' wages to certain situations well defined in the *Code*. I agree with the well reasoned decision of Referee Monnin in *D.A.G. Enterprises vs. Cook* (March 20, 1996) on section 254.1 in that:

"In essence, the section is one for the protection of the employee and requires the employer to make payment of all wages properly due to the employee. It is in that context that I believe that clause (c) must be interpreted." (page 7)

...

"I have concluded that section 254.1(c) contemplates a specified amount or one which can be ascertained and agreed upon by the employee prior to the deduction being made."

[21] Further, as stated by Referee Michael T. L. Blaxland in *D. M. Stewart's Cartage Ltd. v Michael Gamsyager*:

It appears plain that the Government of Canada has determined that no employer under its jurisdiction can deduct any amounts unless the deductions are statutory withholdings, authorized by court order, or by a collective agreement, or "amounts authorized in writing by the employee."

[22] The deductions that Moellenbeck made are not any of the permitted deductions as set out in section 254.1. For there to be a valid deduction, there must be something in writing that states D'Amour agrees to have deducted off his pay whatever is the cost Moellenbeck paid for detailing the truck.

[23] In the present circumstances, D'Amour did not authorize Moellenbeck in writing to make the deduction in issue. As Moellenbeck has not brought itself within any permitted deduction in section 254.1(2) of the *Code*, it cannot lawfully justify the deduction that it made from D'Amour's wages. The *Code* does not permit Moellenbeck to have made the deduction in issue. Accordingly, I conclude that Moellenbeck has not

brought itself within any exception to the general rule that no employer will make deductions from wages due to an employee, as set out in section 254.1(1) of the *Code*.

Dated at Saskatoon, Saskatchewan, on May 6, 2015.



T. F. (TED) KOSKIE, B.Sc., J.D.,
REFEREE