

Manitoba Labour Board

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Case No. 86/15/ESC

File No. 120299

IN THE MATTER OF: THE EMPLOYMENT STANDARDS CODE

BETWEEN:

KILDONAN TREE SERVICE LTD.,

Employer,

- and -

W.S.,

Employee.

BEFORE:

Blair Graham, Q.C., Vice-Chairperson

D. Sutton, Board Member

J. Murphy, Board Member

This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.

SUBSTANTIVE ORDER

WHEREAS:

1. On January 16, 2015, pursuant to Section 96(1) of *The Employment Standards Code*, the Director of the Employment Standards Division, ordered that the amount of One Thousand Dollars (\$1,000.00) being wages owing by the Employer to the Employee(s) be paid to the Director of the Employment Standards Division by the Employer and further required the payment of the administrative fee in the amount of One Hundred Dollars (\$100.00) for a total owing of One Thousand One Hundred Dollars (\$1,100.00).
2. The Employer having disputed the payment of the above-mentioned amount, the Director of the Division, pursuant to Section 110 of the *Code*, referred the matter to the Board.
3. On July 7, 2015, the Board conducted a hearing at which time both parties appeared before the Board and presented evidence and argument.

4. The Board, following consideration of material filed, evidence and argument presented is satisfied that:
- a) the Employer confirmed during the course of the hearing, that there was no dispute regarding the calculations as reflected on the Statement of Adjustment prepared by the Employment Standards Division;
 - b) the Employer was displeased with certain conduct of the Employee, because the Employee's conduct was a violation of a reasonable rule established by the Employer, which was well known to the Employee. The conduct of the Employee also had the potential of damaging the relationship between the Employer and an important customer of the Employer;
 - c) although the Employer's displeasure with the Employee was understandable, there were other steps which the Employer could have taken with respect to the Employee's conduct. As a consequence of Section 19 of the *Employment Standards Regulation* and the application of the general law with respect to deductions from wages of Employees for undetermined liabilities, the Employer, in the circumstances of this case, is not entitled to deduct amounts from the bonus wages properly earned by the Employee. Furthermore the Board has no authority under the *Code* to authorize any deduction, offset, or restitution order from the wages earned by the Employee. Accordingly, the Employee is entitled to receive from the Employer, wages in the amount of One Thousand (\$1,000.00) Dollars; and
 - d) the order of the Employment Standards Division is therefore upheld, and the Employer's appeal dismissed.

T H E R E F O R E

The Manitoba Labour Board **HEREBY ORDERS KILDONAN TREE SERVICE LTD.** to pay to the Director of the Employment Standards Division forthwith:

WAGES:

The amount of One Thousand Dollars (\$1,000.00), less statutory deductions, being wages owing to the Employee, W.S.

ADMINISTRATIVE FEE:

An Administrative Fee in the amount of One Hundred Dollars (\$100.00) pursuant to Section 96(1) of *The Employment Standards Code*.

TOTAL:

The total amount being One Thousand One Hundred Dollars (\$1,100.00).

DATED at **WINNIPEG**, Manitoba, this 4th day of August, 2015, and signed on behalf of the Manitoba Labour Board by:

“Original signed by”

Blair Graham, Q.C. Vice-Chairperson

“Original signed by”

D. Sutton, Board Member

“Original signed by”

J. Murphy, Board Member

CJ:tj:lo-s