Case Name:

Kelowna Flightcraft Ltd. v. Thom

IN THE MATTER OF a Wage Recovery Appeal under Division XVI -- Part III of the Canada Labour Code
Between
Kelowna Flightcraft Ltd., (Kelowna, British Columbia), Appellant (Employer),
and
Scott Thom, (Camp Morton, Manitoba), Respondent (Employee)

[2011] C.L.A.D. No. 196

Human Resources and Skills Development Canada File No. YM2727-2871

Canada
Labour Arbitration
Winnipeg, Manitoba

Panel: Professor Bryan P. Schwartz (Referee)

Heard: December 7, 2010, April 6, 2011.
Award: June 16, 2011.

(34 paras.)

Appearances:

Appellant (Employer): **Kelowna Fllghtcraft Ltd.,** Keri Steele, Human Resources Supervisor.

Counsel for Appellant (Employer): William S. Gardner, Duboff Edwards Haight & Schachter.

Respondent (Employee): **Scott Thom** (self represented).

AWARD

Introduction

1 This is a wage recovery appeal of a Payment Order against Kelowna Flightcraft Ltd ("Kelowna Flightcraft") in favour of Scott Thorn ("Mr. Thorn"). The contested amount is $7,917.88. This amount is comprised of $4,705.60 for regular wages, $1,608.90 for overtime wages and $1,608.90 for vacation pay owing to Mr. Thorn on his departure from Kelowna Flightcraft and is the amount that Kelowna Flightcraft deducted to recoup what it viewed as training costs. Mr. Thorn filed a complaint with Human Resources and Social Development Canada ("HRSDC") in November, 2009. Inspector Joyce Simair for HRSDC, Federal Labour Program, found that the deductions were not in accordance with s. 254.1 of the *Canada Labour Code* (Appendix).

2 Inspector Simair applied the interpretation contained under "Deductions from wages or other amounts due to an employee" from HRSDC policy statement, 817-1-IPG-06Q, (which maintains that deductions by an employer from wages must be authorized in writing and be given in a way that is "truly consensual". In order to meet this test, the policy statement states, "the written authorization must be obtained after the fact, i.e., after the incident or transaction to which it is related has occurred". The Inspector concluded that no such after-the-fact authorization had been obtained and that Kelowna Flightcraft must pay the contested amount to Mr. Thorn. Kelowna Flightcraft appealed that decision and I was appointed as Referee by HRSDC to hear and decide the matter.

3 Kelowna Flightcraft argued that the policy statement cannot overrule the actual statutory language. Kelowna Flightcraft agrees with the "truly consensual" test, but disputes that the "after the fact" authorization is uniformly required to establish the validity of a deduction. I concur with Kelowna Flightcraft that in a hearing before a Referee the expressed intent of Parliament must govern, even in the face of a limiting government policy statement. It may be possible to establish "truly consensual" prior written authorization for a deduction even if the authorization is not signed after the fact.

4 Applying the "truly consensual" test in its own right, however, the proper conclusion on the specific facts of this case is that Kelowna Flightcraft has not demonstrated that it exists. Mr. Thorn's expression of consent to a general employment agreement and three "training bond agreements" - which are promises to repay "training costs" - did not reflect his informed agreement.

Elaboration

5 The broad category to which this case belongs is an interesting and evolving one. Employers sometimes wish to ensure that they can recoup the costs of training employees. They may be concerned about a scenario in which they spend substantial resources on training an employee who then leaves for another company, even a competitor, without first "repaying" the investment in the form of increased contribution to the employer's success. There are many competing consideration

of justice and policy. Employers want a productivity quid for their training quo, and for employees to honour any promises they make to ensure that this happens - either by staying a certain length of time after training, or repaying some part of the training costs. Employees, on the other hand, can be in a vulnerable position and may have no reasonable choice about whether to accept training or not. The common law honours freedom of contract; the autonomy of individuals and enterprises is entitled to respect for its own sake, and society benefits greatly from the ability of private parties to fashion their own commitments to each other based on their own understandings of their interests and aspirations. The common law, however, also values an employee's freedom to leave one employer and find another or strike out on their own. Contracts may be found unenforceable on the basis of "public policy" considerations that include avoiding the unreasonable restraint of trade.

6 In preparing this decision, I have found and reviewed case law on "recoupment on training costs" in a variety of Canadian contexts. The circumstances and results vary greatly and in the end there is little from the case law in other contexts that can be safely applied to the very specific task in this case: which is to apply s. 254.1 of the *Canada Labour Code*, In the interests of protecting employees, that section places particular limits on the ability of an employer to exercise the unilateral power to make deductions from a worker's wages. The only issues in these proceedings are those raised specifically by s. 254.1 and I will attempt here to endeavor simply to arrive at and explain the outcome warranted on the very specific details involved of this case.

Kelowna Flightcraft's Case

7 Kelowna Flightcraft was clear throughout that Mr. Thorn had been a good employee, and it was sorry to see him leave. Its position, however, was that Mr. Thorn had agreed generally with the concept of training bonds when he read and signed off on the Employee Policy Manual on his first day of work, and that he further agreed to "training bonds" in respect of three specific courses. Training Bonds are contracts whereby an employee would reimburse Kelowna Flightcraft for its expenses in delivering training if the employee stayed less than a specific time.

8 Kelowna Flightcraft called Mr. Don Stratton, a longstanding employee. He testified briefly to the effect that he acted as a witness when Mr. Thorn signed a document on his first day with Kelowna Flightcraft stating that he had read the Employee Policy Manual and signed his acknowledgment that he had read it and would abide by it. The Employee Policy Manual included the following paragraphs on training bonds:

> "From time to time the Company may request an employee to attend a seminar, conference, or workshop necessary to perform their job. Prior to registration the Department Head must approve the sessions in writing. The Company will pay 100% of the cost. The employee is required to account for and provide receipts for all expenditures related to the event.
>
> Employees will be required to sign a Training Bond for specialized training that

> is offered with a cost of over $2500. The training bond commits the employee to remain with the Company for a specified amount of time following the training to "repay" the Company for costs invested in the employee. In addition, the training bond commits the employee to travel to support customer needs once training is complete.
>
> If the employee should choose to leave the Company before completion of the allotted time they will be required to repay monies owed. When assigning a repayment schedule, the total outstanding training investments (costs) including the current and any outstanding/ previous training bonds will be taken into consideration. This ensures the Company invests training in the employees who are prepared to remain with the Company for the long-term and allows costs to be recouped from employees who do not utilize their training with the Company."

9 Mr. Thorn conducted a cross-examination of Mr. Stratton. Mr. Stratton agreed that there had been some discussion of the training bonds provision between the two of them. He further agreed that he had heard terms such as "scare tactics", "worthless" and "unenforceable" applied to the training bond agreements, although he did not know if he agreed with those terms, and certainly did not use them himself.

10 Kelowna Flightcraft then called Mr. Grant Stevens ("Mr. Stevens"), Director of Human Resources. He impressed as a witness who attempted to answer questions from both sides honestly and professionally. I have reviewed his testimony in detail and with care. Without restating all the details, an account of his testimony includes the following points;

* Kelowna Flightcraft services planes at its various locations in Canada;

* apprentices can work on planes, but a mechanic must be licensed to sign off on certain reports in a manner that complies with federal regulations;

* federal regulations may also require that a mechanic be specifically trained to work on a specific kind of airplane - that is, obtain an endorsement - before he can sign off on maintenance work;

* there is usually a discussion with a prospective employee about the kind of training they might receive during their first year;

* training bonds are used where the training is optional. There have been cases where an employee declined to pursue an offered training course, and there were no negative consequences;

* Mr. Stevens did not recall Mr. Thorn asking him about the training clause provisions in the Employee Policy Manual;

* repayment of bonds is waived when an employee is fired for cause or laid off;

* an employee who obtains an additional endorsement usually get a small increase -something like twenty-five cents an hour, or about $500 per year;

* where employees have particular issues with the details of a training bond, they can inquire about it and, in appropriate cases, the bond will be modified. For example, Kelowna Flightcraft might agree that where it requested an employee to reschedule a training course, Kelowna Flightcraft might agree that it should bear the change-of-flight fees, rather than including them in expenses that an employee might have to reimburse;

* the Employee Policy Manual is not "top secret" and an employee can take it for review before signing it;

* Mr. Thorn took three courses, and obtained three endorsements. When he left Kelowna Flightcraft, after taking into account pro-rating, Mr. Tom owed over $17,000.

11 On cross-examination by Mr. Thorn, Mr. Stevens stated that:

* the advertisement for the position that Mr. Thorn applied for and obtained did not mention training bonds;

* obtaining the endorsements was not "absolutely required" but given the requirements at the Winnipeg operation it was a "very good idea" for Mr. Thorn;

* having people trained and cross-trained is a good idea, there is an added element of protection if someone is not available for work, and there is more flexibility in scheduling shifts

Mr. Thorn's Case

12 Mr. Thorn testified on his own behalf and called no other witnesses. I found his testimony to be highly credible, and I accept it in all essential respects. His recollections were reasonably specific and intrinsically plausible. Despite the high financial stakes for him, he presented the facts in a cairn manner, showed no signs of anger, animus or other emotions that might colour his perceptions, and appeared to be trying to the best of his ability to be precise, to avoid overstatement, and to acknowledge points that might limit the potential force of his position. His testimony stood up very well to the appropriately respectful but still searching and comprehensive cross-examination by counsel for Kelowna Flightcraft

13 Mr. Thorn made the following observations:

* the advertisement for the job that he applied for at Kelowna Flightcraft made it clear to him that he would be trained for work on Boeing 727s and Convair 580s;

* he made it clear in his Resume that he did not have endorsements for these aircraft when he applied for the position;

* the ad never indicated that he would be required to pay personally for the training to obtain these endorsements;

* it was not until he appeared for his first day at Kelowna Flightcraft that he was supplied with the Employee Policy Manual and discovered the reference to training bonds;

* he asked Mr. Ron Ortlieb, Base Supervisor, about the training bonds. Mr. Ortlieb said in his view the training bonds were a "scare tactic" to keep employees from leaving and that it was pretty much a "formality", and that he had to sign everything in the Employee Policy Manual if he wanted to work there;

* the first approach from the company for a training bond concerned the DC-10. Mr. Thorn had an ankle injury at the time, and did not want to go away for training. Mr. Ortlieb told him that refusing training was not a good idea and might have some negative effects on his employment;

* Mr. Thorn then consulted with the Line Maintenance/Fleet Manager, Keith Clark ("Mr. Clark"), who told him that it would not be wise for him to refuse the course. Mr. Clark kept "forcing the issue", told him that the endorsement was needed in Winnipeg and he could go for physiotherapy while on the course;

* when Mr. Thorn inquired whether a co-worker could go instead, Mr. Clark stated that someone was going on the course, and it was a matter of indifference if the co-worker went instead of Mr. Thorn;

* a co-worker told Mr. Thorn that Kelowna Flightcraft would probably let him go if he was refusing endorsements;

* the pressure to take the course only ended when the co-worker went instead;

* the next endorsement situation, and the first Training Bond Agreement Mr. Thorn signed, was in connection with the Boeing 737, as Kelowna Flightcraft had just had its contract to service these airplanes for a particular customer renewed;

* the new base supervisor made it apparent to him that he had to take the course;

* two employees with endorsements were needed to sign off on some maintenance work, and Mr. Thorn felt that his not having the endorsement would place a strain on other employees and might lead to his dismissal. He further felt that in this case, it was not inappropriate to have to take the training because it was one of the aircraft he was hired to perform work on;

* the next course he was asked to take, and did, was in relation to the DC-10;

* he repeatedly asked fellow employees and managers if the training bonds were enforceable, and never received a clear answer;

* finally, he was asked to take a B727-200 course. He was not happy to have to be away from home yet again, as Mr. Thorn had been almost continuously taking courses for many months, but it was explained to him that he should bite the bullet and get the endorsements over with as soon as possible;

* he did not sign a Training Bond Agreement before going away for the third course. It was only while at the course that the document arrived and he was summoned to sign it;

* Mr. Thorn should have been classified from the outset at a higher job level according to Kelowna Flightcraft's own policies and procedures, and Kelowna Flightcraft's delay in processing the reclassification left Mr. Thorn in an even more vulnerable position in terms of declining endorsement courses;

* the Boeing 727 and DC-10 courses were of absolutely no value to him with respect to potential employment outside of Kelowna Flightcraft.

14 Kelowna Flightcraft properly agrees that to be enforceable, a written authorization for a deduction must be "truly consensual" and that the onus is on the employer to show that such consent exists. In *Carla Industries Ltd. v. Robillard*, [2000] CLAD. No. 7 and adopted with approval in *Skylink Express Ltd. v. Guillon* [2008] CLAD. No. 358, Referee Kaufman summarized some of the other principles on the interpretation and application of s. 254.1:

> **"para. 80** Further, in interpreting contracts of employment which authorize deductions, "...referees must take into account the practical negotiating positions of the parties. If the employer drafts the contract, and the employee must 'take it or leave it', the contra proferentem rule applies. Deductions from an employee's wages will not be considered 'authorized' unless the contract gives reasonable notice to the employee, and uncertainties about the meaning of terms will tend to be resolved in favour of a construction that is reasonable and fair to the employee." 2960941 Manitoba Ltd. v. Mr. Gary Friesen (August 22, 1994) Dr.

> Bryan Schwartz (#23), p. 3. Dr. Schwartz' decision cites Waddams, The Law of Contracts (3rd), para 467.
>
> **para. 81** The document signed by the employee must be a "clear and unequivocal" authorization, as opposed to a signed statement of policy; Roen Enterprises Ltd. and Robert Ferguson (June 4, 1996), K.F. Groves (#231) p. 2. There is no statutory requirement that the authorization must be given at the time of the deduction. However, to be effective, the authorization should be specific rather than general, but this is not an impediment to a pre-employment agreement: Roen and Ferguson, op. cit.
>
> **para. 82** It has also been stated that the onus is on the Appellant to establish that he payment order is incorrect, and that the Inspector's assessment is "correct unless proved otherwise". The Applicant must show the Referee that the assessment is incorrect. The Respondent is not required to prove that the assessment order is correct: 71884 Ontario Inc. and Cubitt [1994] CLAD. No. 1167 (R.L Levinson, December 27, 1994), p. 3; R.J. Lacroix Transportation & Equipment Sales Inc. and Beatty [1998] C.L.A.D. No. 456 (R.L. Levinson, July 30, 1998) at p. 3, par. 4."

15 Mr. Thorn, in my view, did not give his informed consent to the training bond clause in the Employee Policy Manual. He was taken by surprise when presented with that clause on the first day of work and told by a manager on site that it was, in the manager's view, a scare tactic and unenforceable, but had to be signed to proceed with employment Repeated queries to managers as well as co-workers failed to produce any reasonable clarification. Mr. Thorn was not given fair warning by Kelowna Flightcraft that the contract was enforceable, and was under severe pressure to sign it. The alternative of walking away from proceeding with a job on the first day, after accepting the position, was not realistic.

16 Furthermore, the case law on s. 254.1 has established that written authorizations for deductions must be clear, and ambiguities will tend to be construed against the employer who has drafted the clause and presented it as a take-it[tilde]or-leave it situation. The Employee Policy Manual did not make it clear that the scope of Training Bonds which an employee would have to sign included training on aircraft that, in the employee's reasonable understanding, he was hired to work on. Mr. Thorn, with good reason, expected that Kelowna Flightcraft would provide the training for the aircraft mentioned in the advertisement, especially if Kelowna Flightcraft had been informed clearly at the hiring stage that he did not yet have the requisite endorsements. Nothing in the Employee Policy Manual, moreover, mentioned that the training expenses that Kelowna Flightcraft would try to recoup would be through the means of unilaterally imposed deductions from the employee's wages.

17 With respect to the three Training Bonds, here again Kelowna Flightcraft did not obtain Mr. Thorn's true consent.

18 His agreement was not informed because he was justifiably uncertain, despite repeated inquiries to managers and co-workers, as to whether these Training Bonds were legally binding, or whether Kelowna Flightcraft actually sought enforcement or only used them as a "scare tactic". At the outset, a manager had offered the perspective that they were in fact not enforceable, but rather a necessary formality. Mr. Thorn's follow up inquiries never provided him with a clear answer. It would be sufficient for the purposes of this case to find that Mr. Thorn was left confused and uncertain by Kelowna Flightcraft's own words and deeds. With good reason, he was doubtful about whether the documents he signed were viewed as legally enforceable by Kelowna Flightcraft; whether they ever actually did enforce them; and whether they were enforceable as a matter of law. I would go even further, however, and conclude that on balance, Mr. Thorn justifiably thought that the answer to all three questions was probably no.

19 In *Kelowna Flightcraft Ltd. v Giesbrecht*, [2002] C.L.A.D. No 93 the referee found that the employer - as it happens, the same employer as in the present case - had induced an employee to sign a training bond in circumstances that included reassurances that the bond was not enforceable. I appreciate, of course, that the facts of that earlier case, including both the interaction between the parties and the wording of the training manual, are not identical to the current ones. The earlier case is mentioned not as the basis for making factual inferences about the current case, but to illustrate a legal point: that employer representations can vitiate the extent to which an employee's agreement can be considered properly informed.

20 Mr. Thorn's agreement was also not "truly consensual" in the sense of being freely given, rather than extracted under circumstance where he was placed under undue pressure by Kelowna Flightcraft. Mr. Thorn reasonably believed, on the basis of statements by supervisors as well as co-workers, that there was likely to be serious adverse career consequences if he said no. In reaching this conclusion, I have not viewed each contract in isolation. Rather, statements made by supervisory personnel in earlier situations affected his perception of whether he really had any choice in relation to later ones.

21 Kelowna Flightcraft argued that a pre-authorized deduction is likely to be viewed as truly consensual if it is "beneficial" to the employee. The case law behind this suggests, for example, the ability to use a company credit card for business expenses is such a benefit. Mr. Thorn did not take the endorsement courses, however, because they provided some incremental perk or remuneration beyond what he properly viewed as the entitlements that came with his performing his existing job in accordance with Kelowna Flightcraft's expectations. His motivation was not to obtain the small increase in salary that follows from each endorsement, to obtain a promotion or to acquire a skill he could translate to another employer. Mr. Thorn found that taking the courses, away from home and in succession to be onerous. Two of the three courses were of no value to any prospective employers apart from Kelowna Flightcraft. With respect to all three courses, the motivating

"benefit" to Mr. Thorn was that he was able to carry out the tasks for which he was specifically hired or assigned in the ordinary course of his duties. He wanted to carry out these tasks because he wanted to do his existing job well and he was justifiably concerned that refusing to take an offered course, even when uncomfortably close to another he had just taken, would have negative consequences.

22 In its closing argument, ably presented by counsel, Kelowna Flightcraft argued that the employer is not responsible for "shop talk" among non-supervisory personnel. On the facts, I find that even if the effect of statements from ordinary employees were disregarded, and only the conduct of management personnel was considered, the conclusion would be the same: there was not informed consent.

23 Kelowna Flightcraft also urged that I take into account the fact that Mr. Thorn relied on his recollection of statements made by persons who had been Kelowna Flightcraft managers, but who were not present at the hearing, and whom Mr. Thorn did not call as witnesses. Kelowna Flightcraft specifically pointed to the failure to call Mr. Ortlieb, who is now employed at Westjet, which is also Mr. Thorn's current employer. The fact is that Mr. Thorn staked his case on his own testimony, and after an admirably thorough and skilled cross-examination, his evidence remained convincing in its entirety. His case is supported by his account on the words and deeds of a number of managers at Kelowna Flightcraft over an extensive period, all of which withstood rigorous cross-examination. After reviewing the evidence carefully, I accept Mr. Tom's account of the facts in all essential respects.

24 Mr. Thorn was to a large extent unrepresented in these proceedings, and displayed only a limited understanding of either the substantive law involved or of hearing procedures. These proceedings are intended to be summary and accessible to both employers and employees with limited means and legal sophistication The facts and logic of this particular case do not warrant drawing any inference that Mr. Thorn failed to call any particular witness besides himself because of a concern the testimony might undermine his case.

25 In any event, Mr. Thorn would still prevail even if I were to discount his testimony concerning his initial conversation with Mr. Ortlieb. Mr. Thorn would still have proved affirmatively, through his account of a number of episodes over the course of a considerable period, that he did not "truly consent" to the deductions. As noted earlier, the onus was on Kelowna Flightcraft to prove that he did.

26 Kelowna Flightcraft further suggested that Mr. Thorn was not asked to obtain an endorsement for every plane maintained at the operation, including the Convair, so the reasonable inference is that he could not reasonably conclude that he had no choice but to obtain the certifications he was asked to obtain. In my assessment, the fact that Kelowna Flightcraft did not ask Mr. Thorn to obtain an endorsement in one area does not establish that it would accept his refusing to obtain the endorsement in an area it specifically requested.

27 Kelowna Flightcraft put it to Mr. Thorn during cross examination that he should have sought out and spoken to officials in the personnel department if he was confused or uncertain about the effect of the training bond agreements. Mr. Thorn's response was, in effect, that it was reasonable for him to rely on the representations of his direct managers. I agree.

28 Mr. Thorn, with the benefit of some legal advice between the first and second hearing dates offered a further argument on the second day of the hearing. He contended that the *Canada Labour Code* does not permit "wages to be deducted from wages". I was provided an HRSDC interpretation guideline "Hours of Work" 802-1-IPG-002 on this point, but no case law.! have found, however, the following passage from the *Skylink* decision, *supra:*

> "**23** Section 254.1(2)(c) of the *Code* states that among the deductions from wages permitted to be made by an employer are "amounts authorized in writing by the employee". These words impart the clear identification of the specific sum(s) of money at issue and unequivocal written permission from the Respondent allowing the Appellant to deduct or withhold such amount(s) from any wages owing. While the Respondent has agreed in the April 2, 2007 employment letter to "repay the costs of [his] training", he has not provided the Appellant with a written authorization to deduct or withhold any specific amounts of money from the wages owing to him as of the date of his resignation.. Absent such written authorization, identifying the amounts to be deducted and expressly permitting such deductions from wages owed to the Respondent, the Appellant was not permitted to withhold the Respondent's wages in partial payment of these training costs under the *Code.*
>
> 24. Notwithstanding the Respondent's written agreement to reimburse the Appellant for training expenses according to the formula set out in the April 2, 2007 letter, section 168(1) of the *Code*, which provides in part that minimum employment standards established by the *Code* "apply notwithstanding any other law or any custom, contract or arrangement" indicates that the Appellant and Respondent cannot contract out of an entitlement or obligation under the *Code* (subject to a collective agreement and/or more favourable contractual provisions that are not applicable in the present case). The written agreement by the parties does not override the minimum obligations under the *Code* and, in my opinion, the words used in the employment agreement are insufficient to have the effect of authorizing the deduction of any specific sum from the wages owed to the Respondent as of January 2, 2008."

29 I specifically agree with the referee in *Skylink* that the *Canada Labour Code* does not permit the deduction of the entire wages paid an employee while training, as doing so would result in an employee being paid less than minimum wage. The fact that Mr. Thorn's training included working

on planes being serviced by Kelowna Flightcraft would make the violation of minimum wage laws especially flagrant. Even without that element, however, I would agree with HRSDC's guideline 802-1 -IPG-002 that for the purposes of the *Canada Labour Code*, training required by an employer generally is included in the employee's hours of work.

30 Whether any employer can, consistently with the *Canada Labour Code*, unilaterally deduct wages against wages to some lesser extent need not be decided here. It might generally be unlawful for an employer to include wages in deductions, quite apart from concerns about minimum wage laws; but that point would best be decided in a case where it is crucial to reaching a conclusion, preferably with the benefit of well-researched argument from both sides. In the present case, it is enough to say that the Employee Policy Manual and Training Bond Agreements plainly purport to authorize, in the case of "premature" departures, the deduction of all of the employee's wages earned during the training period. On the facts of this case, the attempt to deny wages for this period is contrary to the overriding provisions of the *Canada Labour Code.* The employee must sign a clear and specific written authorization for deductions, and that requirement would not be satisfied by an agreement that is unlawful on its face, but "read down" by a referee to authorize deductions of a substantially different amount.

31 "Recoupment of training cost" cases may also invite the consideration of common law doctrines that do not allow penalty clauses in contracts or provisions that unreasonably restrain trade.

32 These points were not clearly raised by Mr. Thorn, and the consideration of these principles is not necessary to decide this case.

Conclusion

33 While the onus is on Kelowna Flightcraft to prove its case, Mr. Thorn's testimony affirmatively convinced me that his agreement was not truly consensual. That is enough to decide the case by itself. I have also found that the deduction of wages against wages proposed in this particular case is unlawful. This finding is also sufficient to resolve this appeal in favour of Mr. Thorn.

34 The appeal by Kelowna Flightcraft is dismissed. The payment order appealed from stands. Costs were not requested, and no order in this respect is made.

DATED at the City of Winnipeg, in Manitoba, this 16th day of June, 2011.

BRYAN P. SCHWARTZ - Referee

* * * * *

APPENDIX

Canada Labour Code

deductions

General rule

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.

Permitted deductions

(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.

Damage or loss

(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,

Regulations

(4) The Governor in Council may make regulations prescribing:

(a) deductions that an employer is permitted to make in addition to those permitted by this section; and

(b) the manner in which the deductions permitted by this section may be made by the employer.

qp/e/qlspi/qlhbb