

407 ETR repayments in question after termination

there was pressure to deliver loads on time. He disagreed with the company's \$100 limit but the company regularly deducted his overages.

The issue came to a head when Warner's employment was terminated in 2012. Warner filed a complaint under the Canada Labour Code seeking reimbursement of \$4,011.89 previously deducted from his pay. He claimed he hadn't authorized the deductions in writing as required by the Code so he claimed the company should be ordered to reimburse the 407 ETR deductions.

The first issue was whether Warner had signed the memo. He claimed he hadn't but the company produced a copy with his signature on it. The Canada Labour Code Referee concluded that Warner had signed the memo.

The next issue was whether the language of the memo complied with the terms of the Code. Here the Referee pointed out that Warner hadn't really authorized anything. The language in the memo merely said he understood the memo. That seems like hair-splitting to me. The

memo was clear that any amounts over \$100 would be deducted so Warner's understanding that amounts over \$100 would be deducted is surely the same as authorizing the deductions.

Blanket authorizations

But the Code has been interpreted as not recognizing blanket authorizations to deduct future sums from an employee's wages. Employees should not require their employers to sign blanket authorizations requiring future unknown sums to be deducted from wages. It's not fair to force employees to commit to unknown future

deductions. But that's exactly what Warner's employer attempted to do.

So in September his employer was ordered to return all the 407 ETR money it had previously deducted from Warner's pay. That seems like a fair result. After all, Warner's employer received the benefit of the 407 usage. Deliveries were made faster. And if his employer didn't want the benefit of Warner's faster deliveries it could have taken away his transponder. Instead they happily deducted money from Warner's pay.

This doesn't mean employers are always responsible for their employees' 407 ETR

usage. There's nothing to stop an employer from having a clear policy and having their employees agree to specific deductions once each 407 ETR bill has been received. But general blanket authori-

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Nobody likes to pay the exorbitant rates charged by 407 ETR. However, there's no doubt driving on the 407 is a time-saver and that can translate into savings for businesses in the transportation industry.

But who is ultimately responsible to pay the 407 ETR fees when an employee uses the highway during the course of his employment? The issue recently arose in a Canada Labour Code dispute between Jordy Warner and his employer, Moore Brothers Transport Ltd.

In 2005, Moore Brothers gave Warner a transponder but it also required him to sign a memo where he "understood" that any monthly fee in excess of \$100 would be deducted from his pay.

Warner was the company's heaviest user of the 407, stating that he did more work than the other drivers and



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