Case Name:

Provider Express Ltd. v. Dutchak

IN THE MATTER OF a Wage Recovery Appeal under Division XVI -- Part III of the Canada Labour Code
Between
Provider Express Ltd. (Winnipeg, Manitoba), appellant,
and
Daniel Dutchak, respondent
Human Resources Development File No. YM2727-1688

[2003] C.L.A.D. No. 433

Canada
Labour Arbitration

B.P. Schwartz, Referee

Heard: Winnipeg, Manitoba, May 20th, 2003.
Decision: July 3, 2003.

(71 paras.)

Appearances:

Lenore Eidse, for the appellant, Provider Express Ltd.
Daniel Dutchak, the respondent.

AWARD

A. Introduction

1 Mr. Daniel Dutchak worked as a driver for Provider Express Ltd. ("Provider Express"). He was involved in an on-the-job accident in Portales, New Mexico. Provider Express claims that a July 23rd, 2001 document authorized it to not pay Daniel Dutchak a substantial part of his salary that would ordinarily be owing to him. Under Part III of the Canada Labour Code, officials of Human Resources Canada have ordered that Provider Express now pay to Mr. Dutchak the amount it earlier withheld. I have heard this case as a Referee sitting on an appeal from the decisions of those

officials. Ms. Lenore Eidse, Co-Owner of Provider Express Ltd. and Ms. Tammy Michaud, Office Manager of Provider Express, gave solemnly sworn or affirmed testimony for Provider Express, and Mr. Daniel Dutchak ("Dutchak") did the same on his behalf. Neither Provider Express nor Dutchak was represented by legal counsel and neither side offered technical legal arguments or produced case law. They each advocated their position based on their understanding of the facts and what they considered fair and reasonable.

B. The Unfolding of Events

2 The events that produced this case unfolded as follows.

. February 18, 2001: Dutchak begins employment with Provider Express. He signed an agreement at the time called "Employment Conditions".

3 The February 18th agreement did not say that Provider Express could make deductions to recoup its losses from any accidents involving Dutchak. The agreement referred instead to a "bonus" that could be earned for "having no preventable damage to equipment inside or out".

4 Under the terms of employment Dutchak was to be paid 28 cents per mile; the potential bonus was 2 cents per mile.

. February 23, 2001: Dutchak was involved in an accident in Pasadena Texas.

. March 4, 2001: After Dutchak had been involved in two incidents early in his employment, Dutchak signed an agreement to compensate Provider Express.

5 The agreement said that Dutchak would:

> "...pay for damages I did to truck #45 and also any future damage that is caused by my negligence that is not covered by insurance. I also will pay for the accident where I backed into a small delivery Truck in (Pasadena) Texas if it not covered by insurance."

6 Provider Express lowered Dutchak's per mile payment until he had, in effect, paid off the costs that the employer claimed to have sustained as a result.

7 Dutchak has never protested the deductions from the Pasadena accident. He said at the hearing that the accident was "one hundred per cent my fault".

8 Dutchak also testified that the reference in the March 4th agreement to "any further damage" was intended to refer to one specific incident and was not a general commitment to pay any or all damage resulting in the future.

. June 27, 2001: Dutchak hits a gas meter while attempting to make a delivery in Portales, New Mexico.

9 Dutchak testified at the hearing that while attempting to enter a narrow area he struck a gas meter. He did not see the meter and was not aware that he had struck it. The incident was brought to his attention by police before he left Portales. He was presented with a traffic citation document by a local police officer. It identifies a violation of a law concerning "striking a fixed object". At the bottom, there is box checked off entitled "Warning Notice:" and states that "I acknowledge receipt of this notice and agree that a violation of the law has been committed, no further action is required."

10 The ticket does not say that Dutchak was negligent in any way. No evidence was produced at the hearing about New Mexico traffic laws. There is no evidence that negligence is a necessary element in a violation of the law concerning "striking a fixed object".

11 Dutchak testified that in signing the ticket, he did not intend to acknowledge that he was at fault.

12 Dutchak further stated that he believed he exercised due care. He explained that he went along with compensating the company for the Texas incident because, by contrast, he had been at fault for that. He thought that any damage was minor.

13 Lenore Eidse, on behalf of Provider Express, took the view at the hearing that a driver must be "aware of any impediments". She acknowledged that "it is sometimes very difficult for a driver".

. July 15, 2001: The employer issues a pay stub to Dutchak indicating a pay cut on account of the Portales incident.

14 The stub reveals that the employer had already begun reducing Dutchak's pay in order to cover losses to the employer from the Portales incident. Starting from June 15th, his pay had been reduced to 20 cents per mile.

. July 23, 2001: Dutchak signs a document that, according to the employer, authorized pay cuts to pay for the Portales incident.

15 Dutchak testified that he dropped by to pick up a paycheck. He says that as he was leaving, he was asked by a Provider employee to sign a document. He testified that he was led to believe it was a statement about the accident that Provider needed to give "the insurance company". He says that if he understood it to be an authorization to make deductions, he never would have signed it. He said he did not realize until after he left the company's employment that it had been making deductions.

16 The Provider employee who gave him the paycheck testified that she told Dutchak that the document authorized deductions.

17 The document reads as follows:

> "PROVIDER EXPRESS LTD.
> COMPLIANCE REPORT
>
> On June 27, 2001, at approximately 12:20 p.m., Daniel Dutchak hit a gas meter located at 1105 Boulder Alley in Portales, New Mexico. A police officer issued Daniel a written warning.
>
> CONDITIONS:
>
> In the event of any repair bills related to this incident, Daniel Dutchak agrees to take full responsibility and authorizes payroll deductions in order to pay for any damages.
>
> I, Daniel Dutchak, do agree to follow the above set out conditions of employment. In the event I leave the employ of Provider Express and have outstanding repair or damage debt, I authorize my earnings to be withheld."
>
> "The document bears the signatures of Daniel Dutchak, Lenore Eidse and Tammy Michaud."

18 At the hearing, Lenore Eidse testified that at the time the document was signed, neither Provider Express nor Daniel Dutchak thought that there were major costs associated with the Portales incident.

19 The validity and effect of this document is at the core of this case.

. August 18th, 2001: Dutchak stops working for Provider Express.

. September 7, 2001: Provider Express receives a demand letter from Doerr & Knudson, P.A., attorneys for L&D Rentals.

20 It claims that the damage to the meter required L&D to buy a new hot water heater. The overall costs and expenses therefore were $2,283.98. (The letter does not specify Canadian or U.S. currency);

. November 8, 2001: Dutchak files a complaint with the District Office of Human Resources Development Canada.

21 Dutchak formally complained to Human Resources Development Canada that the employer had unlawfully paid him at the lower rate of 20 cents since June 15, 2001.

. August 1, 2002: Human Resources Development Canada makes a Payment Order against the employer.

22 HRDC requires payment of Dutchak's wages at the regular rate from July 15th, 2001 until he finished his employment.

. August 21, 2002: Provider Express appeals the Payment Order.

. September 10, 2002: Inspector Emina Omerkadic, upheld the Payment Order against Provider Express.

23 Inspector Omerkadic found that that the July 23rd, 2001 document did not satisfy "written authorization requirements" because:

- "it was dated (and signed?) after the first deduction was made;
- it does not specify the amount of the deduction;
- the fact that Dutchak is disputing it testifies that it was not given in a truly consensual manner. In addition, the complainant [Dutchak] stated that the employer must have changed the document after he signed it, because he signed only a statement regarding the accident that was supposed to be used for insurance purposes."

. October 30, 2002: I received a letter from Human Resources Development Canada confirming my appointment as the Referee to hear an appeal by Provider Express from the decision of the Inspector.

. May 20, 2003: The hearing of the appeal was held.

24 It had initially proved difficult to find a time that Mr. Dutchak was available, but the parties were able to attend a half-day hearing.

C. Statutory Background

25 The Canada Labour Code includes the following provisions:

"s. 247. Except as otherwise provided under this Part, an employer shall

(a) pay to any employee any wages to which the employee is entitled on the regular payday of the employee as established by the practice of the employer;
(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 wages or other amounts arose;

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

s. 254.1(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) overpayment of wages by the employer; and
(e) other amounts permitted by regulation.

s. 254.1(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."

D. Human Resources Development Canada Interpretation

26 In a text date 05-11-98, and signed, Warren Edmondson, Assistant Deputy Minister, Labour, styles itself as an "Interpretation" of s. 254.1.2(c). It reads as follows:

" INTERPRETATION

1. Subject

The application of paragraph 254.1(2)(c) which permits an employer to deduct "amounts authorized in writing by the employee" from wages or other amounts due to an employee.

2. Issue

> There is a need for a national consistent approach in the application of paragraph 254.1(2)(c) of the Canada Labour Code, which can be applied in a uniform manner and will clarify the rights and obligations of employers and employees in accordance with the intention of section 254.1.
>
> 3. Question
>
> When can a deduction be said to have been authorized pursuant to paragraph 254.1(2)(c) of the Code?
>
> 4. Conclusion
>
> Subsection 254.1(1) presents the general rule: "No employer may make deductions from wages or other amounts due to an employee, except as permitted by or under this section."
>
> Subsection 254.1(1) prohibits an employer from making deductions from wages or other amounts except under specific circumstances as set out in subsection 254.1(2). One of these specific circumstances (paragraph 254.1(2)(c)) is when the deductions are "amounts authorized in writing by the employee".
>
> Paragraph 254.1(2)(c), "amounts authorized in writing by the employee", requires a written authorization by the employee assenting to the deduction of a specific amount. For every deduction made, the authorization must be in writing, specify a particular sum, and be given in a way that is truly consensual. General blanket authorizations in employment contracts, with or without specific amounts, may operate to assign responsibility or liability to the employee, but the corresponding deduction requires a specific authorization. In order to meet these requirements, the written authorization must be obtained after the fact, i.e., after the incident or transaction to which it is related has occurred.
>
> Where an inspector has determined that the deduction of a particular sum has been authorized in writing by the employee, the inspector must also ascertain from the circumstances whether the authorization was truly consented to by the employee."

27 As mentioned earlier, I have received no technical legal argument of any sort in this case, including any argument as to the weight to be given to what I will call a "Ministerial interpretation".

28 The decision I have reached in this case should be the same even if there were no such documents. I will, however, offer some comment on their weight.

29 In general, I believe that "Ministerial interpretations" should be given some weight by Referees in proceedings like these. They are not necessarily decisive. As I understand it, the statute - the Canada Labour Code - is what is ultimately binding, not interpretations issued by the Minister or by Referees in earlier cases. Both the Ministerial interpretations and earlier decisions of Referees in other cases, however, should be given serious consideration by a Referee who is deciding a case. They have some persuasive value. It is desirable that decisions in this area be reasonably consistent, and that employers and employees have reasonable guidance before disputes arise as to the general

legal framework in which they are operating. A Referee can and should, however, reject a Ministerial interpretation or case law if he is convinced that one or the other is clearly mistaken.

30 In adopting this view, I am taking the same approach that is taken with Interpretation Bulletings issued by the Government of Canada in the context of the Income Tax Act: they are not binding, they can and should sometimes be rejected, but they do carry some weight; Harel v. Deputy Minister of Revenue of Quebec, [1978] 1 S.C.R. 851 at p. 859.

31 The Ministerial interpretation on s. 254 is consistent with, but more specific in several respects than, the language of the statute. It requires that an employee authorization:

- specify a "specific amount". The statute itself is not clear on whether "amounts authorized in writing" could include amounts that are determined according to a concept, rather than with a precise dollar tag attached. E.g., what if the employee signs an agreement that "I will be responsible for damages caused by my negligence, including losses that result from claims by third parties?" The Ministerial interpretation rejects the latter; an authorization must specify a precise amount and be determined after the incident occurred.
- must be something to which the employee "truly consented". "Truly" is not defined, but the implication might be that Referees should not find consent where the deduction was not clearly explained to the employee, or where the authorization was obtained through the exercise of economic duress.

32 The approach to "specific sum" in the bulletin is compatible with the language of s. 254. Other interpretations are possible. For example, consider a hypothetical document prepared by an employer and signed by an employee that says:

> "We, the employer, can make deductions from your weekly paycheck to compensate us for damage you cause to our trucks caused by your negligence. The maximum total amount we can deduct is $500. The maximum we can deduct in a given week is $50. The total amount we deduct cannot be more than our MPI deductible."

33 It could be at least argued that such a clause would be sufficiently "specific" to satisfy s. 254. I am not sure how I would decide such a case if it arose. It is possible that I would adopt the strict approach taken in the Ministerial interpretation and find that such a document does not constitute a valid authorization. But I would not form any definite opinion until such a case actually arose and the parties had the opportunity to put forward competing arguments.

34 I am not required by the facts of this case, however, to decide whether the strict approach in the interpretation bulletin should always be followed. Leaving aside the Ministerial interpretation entirely, I would still find there are compelling reasons for rejecting the appeal of Provider Express.

E. General Principles in the Case Law Developed by Referees

35 Referees have, in different cases, adopted varying general approaches to s. 253(1)(c), and on some points have arrived at directly conflicting results. There are, however, some points on which some Referees have taken a clear stand that has been followed in a number of other cases, rarely or

never contradicted, and with which I agree. These points are capably summarized by Professor R.D. Gibson in Buckler Transport Ltd. v. Gardner [2000] C.L.A.D. No. 418:

> "There is, however, no controversy that the onus or burden of proof is on the appellant in these proceedings. An appellant cannot win by default even if the respondent does not appear; the appellant must prove its case."
>
> "Where the employer/appellant proposes to make a deduction from earnings as a result of the misconduct of the employee, it must establish that the misconduct allegedly occurred not simply on balance of probabilities, i.e. more probably than not, or "51% probable", but must establish that the misconduct allegedly occurred at the higher standard of "clear and convincing evidence."
>
> 2960941 Manitoba Ltd. v. Mr. Cary Friesen (August 22, 1994) Dr. Bryan Schwartz (#23), p. 2.
>
> "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 proferentum 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. Cary Friesen (August 22, 1994) Dr. Bryan Schwartz (#23), p. 3. Dr. Schwartz' decision cites Waddams, The Law of Contracts (3rd), para 467.
>
> "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.
>
> "It has also been stated that the onus is on the appellant to establish that the payment order is incorrect, and that the Inspector's assessment is "correct unless proved otherwise". The appellant 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] C.L.A.D. 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.

F. Preliminary Factual Consideration: Was Dutchak Negligent?

36 Before interpreting the July 23rd document, several factual determinations might usefully be made.

37 First, no impartial and informed Referee could possibly conclude that Provider Express had proved, on clear and convincing evidence, that Dutchak acted negligently when his truck hit the meter. Dutchak's testimony is that he acted with reasonable care. The meter was not readily seen, he testified, and was in an unexpected place. The traffic citation he found at most acknowledged a technical violation of the law; it did not acknowledge negligence. Provider Express did not have an eyewitness, circumstantial evidence, a third party report or any other evidence that would constitute any evidence that Dutchak was negligent. The burden of proof is on Provider Express, and it did not meet it. Indeed, I accept Mr. Dutchak's evidence that he acted with reasonable care.

G. Another Preliminary Factual Determination: Was Dutchak Aware of the Nature of the Document He Signed?

38 Dutchak does not clearly recall what was said to him by the employer on July 23rd, but his recollection is that he was led to believe that he was merely signing an accident report. He said that he went to Provider Express to pick up a cheque and had no reason to expect that anything else was involved.

39 Dutchak impressed me as an intelligent person. Is it possible that he would have failed to examine the document and understand it before signing?

40 Ms. Tammy Michaud testified that she briefly explained to Dutchak that the document authorized a reduction in his salary on account of the accident.

41 Ms. Lenore Eidse made it clear, on behalf of Provider Express, that she does not believe Dutchak's story. She appears to have concluded that Dutchak's recollection or account has been affected by his desire to escape the consequences of an agreement that he had made in writing with full knowledge of the contents. She appears to suspect that Dutchak is a smart man who is simply pretending that he was naïve about the document he signed.

42 I suppose it is possible that Ms. Eidse's suspicions are correct. But they remain unproved.

43 Dutchak's story does not actually appear to be implausible. According to his testimony, he attended for a meeting for a different purpose - to pick up a cheque - and had no prior notice that he was there to accept a pay reduction. The document was presented to him, he says, just as he was leaving. The document is styled "Compliance Report". That title did not in itself give any clear notice that it amounts to a unilateral acceptance by Dutchak that he was accepting a wage cut. (A title like "acceptance of wage reduction", for example, would have been more likely to alert a reader who is taking a quick glance at the document). Dutchak apparently was not always attentive to paperwork; he had not earlier noticed that Provider Express had lowered his mileage rate.

44 Furthermore, no explanation has been given as to why Dutchak would have accepted the pay cut. What was the advantage to him of doing so? He had earlier accepted a pay cut when he thought he had been at fault; but his consistent and plausible story is that he did not regard himself as blameworthy in connection with the Portales incident.

45 Recollections by honest and intelligent people of conversations are sometimes mistaken, and here the dispute is over whether a few words were uttered long ago. I am quite prepared to assume that Ms. Michaud was sincere in her testimony about what Dutchak was told when he signed the July 23rd document; what I cannot conclude is that she is actually correct. I find that it has not been proved that Provider Express outlined the nature of the document to Dutchak.

46 I further find that it has not been proved that Dutchak actually did understand the basic nature of the document.

47 The harder point is whether Dutchak should be deemed to have assented to the document even if he did not take the trouble to read it carefully. There is a case to be made that an intelligent and mentally competent adult should, as a matter of legal policy, be held responsible for a short document he signs even if he did not take the time to read it carefully.

48 There might indeed be many cases in which it is just and reasonable to hold that an individual should be deemed to have read and understood a document, despite not having done so. Here, however, Dutchak's testimony raises serious doubt as to whether it would be appropriate to deem him to be bound by the terms of the document. On Dutchak's version of events, he was led by the context and by the employer's statement to believe that he was merely signing a statement about what happened for insurance purposes, not committing himself to compensating Provider Express.

49 While Ms. Michaud's recollection might be correct, I do not have any evidence to confirm it, and Mr. Dutchak's evidence - which is plausible - contradicts it. In my view, Provider Express has not proved, by clear and convincing evidence, that Mr. Dutchak either subjectively agreed to the terms of the July 23rd document or that it is just and reasonable to deem him to have done so.

50 This is enough to dispose of this case in favour of Mr. Dutchak.

51 Let me assume, however, for the sake of argument, that Mr. Dutchak agreed to be bound by the July 23rd document or should be deemed to have done so. Provider Express would still have to show that the document should be interpreted as authorizing the deductions on account of the Portales incident. Provider Express would also have to show that such deductions are permitted by s. 254. Neither is the case.

52 Let me begin with the interpretation point.

H. Lack of Clarity in the July 23rd Document

53 The case law consistently holds that an agreement to accept responsibility must be "clear and unequivocal". The July 23rd document fails in several crucial respects. This consideration is enough to determine that Provider Express' appeal must be rejected and that I must rule in favour of Mr. Dutchak.

54 The document dated July 23rd is far from clear and unequivocal in many respects. Among other things:

. Provider Express had lowered Dutchak's wages going back to June 15th. It did so unlawfully. It did not have written authorization to do so, as required by the Canada Labour Code. Nothing in the July 23rd document clearly establishes that Dutchak is agreeing to take the extraordinary step of ratifying past unlawful conduct by Provider Express. (It is questionable whether s. 254 permits an employer to obtain such retroactive authorizations, but there is no need here to decide this point definitively);

. The reference to "pay for any damages" does not make it clear that Dutchak was committed to Provider Express for payments that Provider Express made to a third party, rather than merely compensating Provider Express for any damage to Provider's own property.

55 I would emphasize that the importance of "clarity" in this case is not just a matter of Provider Express "losing on a technicality". Provider Express' position is that Dutchak made a variety of extraordinary concessions in return for little or nothing. According to Provider Express, by signing the document Dutchak agreed to waive the illegality of what Provider Express had done earlier; he accepted that he was negligent or that he should pay for damages even if he was not negligent; he accepted liability for damage claims by third parties against Provider Express; he accepted liability to an undetermined and potentially massive extent.

56 Whether it is an ordinary contract case or a case under the Canada Labour Code, an impartial decision maker is rarely going to accept that a party has accepted unusual and onerous provisions unless the language is clear.

I. Failure to Specify a Precise Amount, or even Provide Reasonable Notice as to the Extent of Potential Losses to the Employee

57 Many, though not all, of the earlier cases appear to have found that a deduction from wages is only valid if it specifies a particular amount of money. A general authorization, based on some verbally formulated concept, has often been found insufficient. The Ministerial interpretation is clear and strict that in a case concerning damage a specific amount must be specified after the incident in question.

58 While I see a strong case for adopting the Ministerial interpretation bulletin approach in its entirety, I will refrain from definitively doing so. I do not have the benefit of technical legal argument to help me evaluate the weight to be given to Ministerial interpretations in general, or the particular one in this case and I can decide the issue of "specific amount" on a narrower basis on which I am very confident.

59 What I am very clear on in my mind is this. On any reasonable interpretation of s. 254, interpreted in light of the objects and purposes of Part III, the agreement to deduct must at least provide the employee with a reasonable sense of the extent of his potential losses. The July 23rd document does not provide any notice of the range of the dollar amount of liability to which the employee is supposedly exposing himself.

60 During the hearing, Ms. Lenore Eidse candidly testified that at the time the July 23rd agreement, Provider Express was operating on the basis of Dutchak's opinion that any damage caused was minor. On the evidence provided by Dutchak, his estimate was objectively reasonable. She further testified that neither Provider Express nor Dutchak expected that the damage claim by the third party, L&D, would be anywhere near as large as it later turned out to be. A real injustice would arise were Dutchak to be found liable under the July 23rd document when it was based on his reasonable assumption, shared by Provider Express, that any losses to Provider Express resulting from the incident would be modest.

J. Issues of Conscionability and Public Policy

61 Cases like this do raise some larger issues of fairness and public policy. As Justice LaForest explains in his dissenting opinion in London Drugs Ltd. v. Kuehne & Nagel International Ltd., [1992] 3 S.C.R. 299, there are some serious policy and fairness considerations that weigh against a lower-level employee being held personally liable for negligence when performing on behalf of his employer. The majority of the Court adhered to the traditional rule that the employee is personally liable.

62 An employee is taking on risk on behalf of his employer for which his remuneration might be quite small. If he is held personally liable for negligence, the consequences can be catastrophic. By contrast, the employer is often in a position to offset the losses caused by some episodes of negligence by amassing profits from a much larger number of successful efforts by many employees. The employer, furthermore, often has the financial resources and expertise to arrange for liability insurance, whereas the employee might not.

63 In Manitoba, employers themselves in many circumstances are not liable for all the loss caused by negligence by their managers or employees. The workers compensation scheme provides that an employee receives moderate compensation according to various schedules and formulas if he is injured in the workplace. He cannot sue the employer in tort for the injury, even if it is caused by the employer's negligence. The employer may have to pay higher premiums, but the risk of catastrophic loss due to negligence causing injury to employees is virtually eliminated by statute.

64 The liability of employers for injuries to third parties caused by the automotive aspects of their business is also limited. A compulsory auto insurance scheme provides schedules and formulas for compensation victims and eliminates their rights to sue in tort.

65 Perhaps some study should be given to considering specific provisions in the Canada Labour Code to address explicitly what kinds of arrangements to reimburse an employer are acceptable in substance. Perhaps there should be some cap - a maximum of X week's wages to be paid out over a period of Y weeks.

66 In this case, I have not found it necessary to make any determination of whether the kind of arrangement Provider Express claims to have made with Dutchak would be unenforceable under the Canada Labour Code by reason of unconscionability or public policy objections. I will assume that Provider Express could, within the terms of s. 254, theoretically obtain agreements from its employees to pay a very large amount of damages on account of an act of employee negligence.

67 Provider Express took the position that it treats its employees fairly, even generously; "more like family than employees". I am prepared to accept that Provider Express sincerely believes that

its withholding of Dutchak's wages is reasonable and fair. The fact remains, however, that there are legal requirements that Parliament has set out for any such withholding to be valid.

68 Officials of Human Resources Development Canada have investigated and considered this matter and found that the legal requirements were not met in this case. Their decision was based on an investigation that appears, from the record, to have been extensive and thorough. Their decision is supported by the clear language of the Ministerial interpretation. It also finds considerable support in the case law developed by Referees.

69 It has not been shown to me that the decision of the Human Resources' official were incorrect.

70 They are, in fact, consistent with the view I would take of this case myself, quite apart from the decisions of those officials and quite apart from the Ministerial interpretation.

71 I would conclude by thanking the Provider Express team and Mr. Dutchak for the manner in which they conducted themselves at the hearing. Despite the fact that this dispute has gone on for some time, and the parties have taken very different views of matters, the hearing itself proceeded in a manner in which the parties were patient, efficient and civil in dealing with each other and with me.

qp/d/qlhbb