

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C. 113

- by -

Northland Properties Limited, operating as
Sandman Hotels & Inns Vernon and Sandman Inn (Blue River)
("Northland")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

FILE NO.: 98/002 and 98/058

DATE OF HEARING: February 26 and March 12, 1998

DATE OF DECISION: April 27, 1998

DECISION

APPEARANCES

for Northland Properties Limited:	K.R. (Ken) Johnston Taj Kassam Graham R. Rennie Shirley Grayson
for the individuals:	In person
for the Director:	Jennifer Hagen Robert Turner

OVERVIEW

This Decision involves two appeals by Northland Properties Limited (“Northland”), from Determinations under the *Employment Standards Act* (the “*Act*”) by delegates of the Director of Employment Standards (the “Director), the first dated December 9, 1997 and involving Northland Properties Limited, operating as Sandman Inn (Blue River) and the other dated January 7, 1998 and involving Northland Properties Limited, operating as Sandman Hotels and Inns Vernon. Both Determinations found the individuals involved, John Majetic and Barbara Early (“Majetic” and “Early”) at Blue River and Orest and Audrey Zaryski (“Mr. Zaryski” and “Mrs. Zaryski”), at Vernon, to be employees for the purposes of the *Act* and entitled to overtime and statutory holiday pay. In the former Determination, Northland was found to have contravened Sections 18, 40, 45 and 58 of the *Act* and was ordered to cease contravening the *Act* and to pay an amount of \$5,059.33 to Majetic and Early. In the latter Determination, Northland was found to have contravened Sections 16, 28, 36(1), 40(1), 40(2), 46(1) and 46(2) of the *Act* and was ordered to cease contravening the *Act* and to pay an amount of \$17,833.94 to Mr. and Mrs. Zaryski. Northland has appealed the Determinations, saying the delegates erred in concluding any of the individuals were employees under the *Act* and, in any event, the delegates were wrong in their conclusion about how many hours were worked by each of the individuals.

ISSUES TO BE DECIDED

There are two issues to be decided: first, whether any of the individuals were employees for the purposes of the *Act*; and second, whether the conclusion by the delegates about the hours of “work” of the individuals was wrong.

FACTS

Northland is a privately owned business operating in the hospitality and tourism sector. It operates its business through three divisions, Dencan Restaurants Ltd., Northland Properties Real Estate Division and Sandman Hotels and Inns (“Sandman”). It is the last of these three divisions with which this appeal is concerned.

Northland has its head office in Vancouver and employs 25 persons there. Relative to the business of Sandman, they are employed in central reservations, purchasing, payroll and procedural accounting functions. The business of Northland is headed by the President of Northland and three Vice Presidents. Each Vice President also has over-all operational responsibility for one of the three divisions. Mr. Taj Kassam is a Vice President of Northland and President/CEO of Sandman. Mr. Kassam gave evidence about the structure and operations of his division. Sandman owns and operates 12 inns (motels) and 8 hotels in British Columbia and Alberta. The motels are typically run by a husband and wife team of “resident managers” or “hosts”. The individuals were two such couples. For ease of reference, I shall refer to them as “resident managers”. The hotels are typically run by a General Manager and there is no issue in these appeals relating to them.

Sandman employs approximately 2500 persons, making it one of the largest hotel/motel chains in Canada. Directly under Mr. Kassam in the operational hierarchy of Sandman are two regional directors, who have operational responsibility for two hotels each, and two managers, who have operational responsibility for six motels each. Shirley Grayson (“Grayson”) was the manager responsible for the Blue River and Vernon motels. The next level in the operational hierarchy are the General Managers at the hotels and the resident managers at the motels. I heard little evidence about the former, as the focus of the evidence was on the duties and responsibilities of the latter.

Mr. Kassam testified that resident managers of the motels are paid salary and bonus, the bonus being determined by the annual financial performance of the motel (although none of the individuals remained employed with Northland long enough to qualify for a bonus). Also, resident managers are provided with accommodation at no cost, are given a car allowance, receive free or subsidized meals at any restaurant associated with Sandman or their motel and receive greater benefits than what hourly staff would be entitled to receive.

The evidence of Northland was that resident managers have responsibilities relating to hiring, firing, scheduling housekeeping and front desk relief, evaluating employees at their motel and have input into the preparation of the annual budget for their motel. Resident managers are also responsible for all occupancy issues and for any emergency situations that might arise on the property. They are expected to perform a public relations function with customers or potential customers, for both Sandman, generally, and their motel, specifically. Resident managers have day to day operational responsibility for their motel, including checking customers in and out of the motel, ensuring the rooms are cleaned and ready for occupancy, ensuring the property is properly maintained and presentable to the public, ordering or purchasing supplies, accounting for daily receipts, making bank

deposits and providing operational and financial information to their manager and, for some information, to head office.

The Sandman at Blue River has 35 rooms and an adjoining restaurant. The restaurant is not managed by Majetic and Early, although Majetic was assigned some duties relating to its maintenance. The motel is also the Greyhound depot at Blue River and Early and Majetic had responsibilities in that area. The couple were hired by Grayson following an interview in Cranbrook in early 1996 and assumed their positions in Blue River May 23, 1996. They voluntarily terminated their positions on October 15, 1996. The requirements of the positions were outlined to them by Grayson during the interview and reinforced during their training period. During the time Early and Majetic were at the motel, there were 2 to 4 housekeeping staff on the payroll. The payroll summaries for the housekeeping staff showed that a normal day consisted of between 12 and 16 hours of housekeeping work shared by 2, and sometimes 3, housekeeping employees.

Early and Majetic were required to keep the front desk of the motel open between the hours of 6:00 am and 12:00 midnight. Majetic would open the desk at 6:00 am and he would remain there until 9:00 am, performing and communicating the room count that was required to be sent to Northland on a daily basis, checking out customers, cleaning the lobby, notifying the housekeeping staff which rooms had been vacated and looking after ticket sales and parcels as the Greyhound agent. At 9:00 am, when Early took over the front desk, Majetic started room checks and assisted the housekeepers, but mainly he did outside cleanup and maintenance. Two or three times a week he drove to Valemount to make a bank deposit and to pick up liquor and cigarettes. He helped behind the desk in the afternoon if the inn was busy.

Early started at 9:00 am, taking over the front desk duties from Majetic. She assumed all the responsibilities associated with the front desk and addressed any staff issues. She performed the administrative work that was required at the inn, including time keeping, bookkeeping, preparing daily reports, maintaining inventory and ordering supplies. She also did the work schedules for the housekeeping staff. At approximately 11:00 pm a restaurant employee took over the front desk duties. Both individuals took breaks during the day. From time to time emergencies arose and either or both were required to look after those, whenever they occurred.

While the motel at Vernon is larger than at Blue River, having more than 60 rooms, the duties and responsibilities of the resident managers were similar. In the case of Mr. and Mrs. Zaryski, it was Mrs. Zaryski who opened the desk at 6:00 am each morning, did the room count and communicated that information to Northland, prepared a list of rooms that needed to be cleaned and left the list to be picked up by the housekeeping staff, cleaned the lobby, started the book work for the day, checked out customers and accepted telephone inquiries and reservations. Unlike Blue River, where the housekeeping staff were scheduled and assigned their duties by Early, Vernon had a head housekeeper who essentially worked independently of Mr. and Mrs. Zaryski. Mr. Zaryski was predominantly occupied with the maintenance requirements of the motel. He started at

9:00 am. He was also responsible for closing the front desk at 12:00 midnight. The bank deposits were done daily, as the bank was nearby.

The individuals confirmed they had and exercised most of the responsibilities and authority outlined by Northland. They disputed any final authority to fire employees. Only one of the individuals, Early, acknowledged any involvement in firing an employee. Melinda Johnston was terminated while Majetic and Early managed Blue River. It was not shown that Majetic was involved in her firing. Early, who recommended Johnston be fired, said she had no authority to fire her without approval from her director, Shirley Grayson. Grayson testified that she was consulted by Early before Johnston was fired, but would not acknowledge Early was required to do so. There was no evidence that any employee had been fired at Vernon while Mr. Zaryski and Mrs. Zaryski were resident managers.

Early and Mrs. Zaryski acknowledged involvement in hiring employees. Early had hired two employees. In respect of both she testified she had sought approval from Grayson before hiring took place. Grayson said Early had the final decision on hiring. Mrs. Zaryski was directly involved in hiring one employee, for desk relief, and had communicated with Grayson to confirm she could do so. Also, she attempted to hire a casual labourer to assist in cleanup when the basement of the motel flooded, but was told by head office that the person was to be paid at the property from petty cash, and not placed on the payroll. She said that any employees hired for housekeeping would be selected by the head housekeeper, Joanne Arsenault (Pelletier), and she would be notified for her approval.

Mr. and Mrs. Zaryski assumed their positions in Vernon on September 6, 1995 and left voluntarily on May 31, 1996. Even though they had several years of experience in hotel/motel management, having owned a motel for approximately four years and managed a 900 unit apartment, Mr. and Mrs. Zaryski were given four days training in the policies and procedures of Sandman governing the operation and administration of its motels. Helen Pakka, who trained them, said in her evidence that the training stressed the importance of following the procedures set out in the company manual and that the manual was left at the motel for their reference.

None of the individuals were involved in or had any responsibilities for preparing a budget for their motel or for evaluating employees. For the most part, none of the individuals had the authority to make any purchase or incur any expense in respect of the operation of their motels. There was a petty cash float at each motel and the resident managers were pre-authorized to draw from it for ordinary operating expenses, such as purchases of liquor and cigarettes which were sold from the motel and, in the case of Blue River, the adjoining restaurant. Extraordinary operating expenses and capital expenditures required approval from Grayson or head office. All purchasing of supplies was centralized at head office and orders required the signature of Grayson. Any wage increases for staff also required the approval of Grayson.

The individuals were allowed 4 days off a month. They had little or no control over which days off they would receive, as their replacements were on a scheduled rotation prepared

by Sandman into which the individuals had no input. Additionally, they were allowed 8 hours a week of “desk time”, which meant they could bring in a replacement to manage the front desk for a total of 8 hours each week if for any reason both individuals were required to be off the property at the same time. In Vernon the “desk time” was increased to 15 hours a week in order to allow for additional help in maintenance when the sewer backed up into the motel and the roof leaked water into a number of rooms.

There is no evidence any final decisions relating to the conduct of the business were made by the individuals. There was evidence that some resident managers, though not the individuals, have made suggestions relating to the operation of their motel and these had been acted upon. But there was also evidence that suggestions have been made which were not acted upon. In each case the final decision appears to have been made at head office.

ANALYSIS

Northland says the individuals are managers and Parts 4 and 5 of the *Act* do not apply to their employment. The delegates concluded the individuals were not “managers” for the purposes of the *Act* and therefore were not excluded from application of Parts 4 and 5 of the *Act*. Northland bears the burden of persuading me, on a balance of probabilities, that the conclusion of the delegates is wrong.

Paragraph 34(1)(f) and Section 35 of the Regulations to the *Act* exclude the application of Parts 4 and 5 of the *Act* to managers. In subsection 1(1) of the Regulations to the *Act*, manager is defined:

“manager” means

- (a) a person whose primary employment duties consist of supervising and directing other employees, or*
- (b) a person employed in an executive capacity.*

The Tribunal addressed the first part of that definition in *Director of Employment Standards (Re Amelia Street Bistro)*, BC EST #D479/97:

Any conclusion about whether the primary employment duties of a person consists of supervising and directing employees depends upon a total characterization of that person’s duties, and will include consideration of the amount of time spent supervising and directing other employees, the nature of the person’s other (non-supervising) employment duties, the degree to which the person exercises the kind of power and authority

typical of a manager, to what elements of supervision and direction that power and authority applies, the reason for the employment and the nature and size of the business. It is irrelevant that the person is described by the employer or identified by other employees as a “manager”. That would be putting form over substance. The person’s status will be determined by law, not by the title chosen by the employer or the perception of some third party.

(at page 6)

The Tribunal has also expressed its opinion on what is contemplated by the phrase “employed in an executive capacity”. In *Sunshine Coast Publishers Inc.*, BC EST #D244/96, the Tribunal adopted an approach to the second branch of the definition that recognizes the reality that many senior executives, persons charged with the authority and discretion to make key decisions and independent judgments affecting the conduct of the business, often have few, if any, duties relating to supervising or directing other employees. The Tribunal stated:

If “manager” was defined solely in terms of the first branch of the definition that appears in the Regulations, many senior executives (such as CEOs) would probably fall outside its purview as such individuals rarely occupy themselves with close supervisory functions. . . . Typically, senior executives do little in the way of direct supervision - their function is more policy oriented and their primary duties lay in meeting with peers or other persons (often people outside their own firm) over whom they exercise little, if any, direct supervisory authority.

...

The *Oxford Dictionary* defines an “executive” as:

“n. a person or group that has administrative or managerial powers in a business or commercial organization, or with authority to put the laws or agreements etc. of a government into effect. -- *adj.* having the powers to execute plans or to put laws or agreements etc. into effect.

I cannot conclude from the evidence that any of the individuals are “employed in an executive capacity”. None demonstrate the kind of independent action, authority or discretion typical of a person employed in such a capacity. They neither make nor are involved in any key decisions relating to the conduct of the business of Northland or Sandman. Mr. Johnston argued that having day to day responsibility of a significant business asset, the motel, was demonstrative of executive capacity. The evidence does not reveal the individuals had any significant responsibility for the asset. The evidence, in fact, showed the individuals had very little input into decisions relating to the asset. No extraordinary operational expense and no capital expense could be made without approval from either Grayson or head office. Repairs on the properties needed the approval of Grayson and decisions about how, when and by whom repairs would be done were made

by Grayson or head office. There was evidence that significant repairs to the roof of the motel in Vernon were delayed by Grayson until Northland's maintenance crew were available and could be brought to Vernon.

The evidence also shows that Sandman has routinized the running of the motels and the duties and responsibilities of the individuals are predominantly administrative. Little room is given for the individuals to exercise independent judgment and the circumstances where they are allowed to do so relate to areas that are unrelated to the kinds of business decisions that would be made by a person in an executive capacity. To suggest, in the context of a business such as Northland, which controls millions of dollars in assets and income, that the occasional decision of a resident manager to discount the rate of a room in order to secure a customer for what would otherwise be an empty unit can be characterized as executive decision making would make a mockery of the concept of "*executive capacity*" for the purposes of the *Act*.

Also, I have no difficulty concluding that Mr. and Mrs. Zaryski's primary employment duties do not consist of supervising and directing other employees. There was no evidence that any significant amount of time was spent supervising and directing other employees. The primary employment duties of Mrs. Zaryski related to performing administrative tasks, while Mr. Zaryski's primary responsibility was for the maintenance of the motel. While they were employed to "manage" the motel, in the context, their role amounted to little more than acting as "caretakers" on the property.

Considering the remedial nature of the *Act*, as the Tribunal indicated was necessary in *Re Amelia Street Bistro, supra*, I cannot find that either are exercising a power and authority typical of a manager charged with supervising and directing other employees. The totality of the evidence indicates that their power and authority was limited or determined by the policies and operating procedures imposed by Northland. For example, while the evidence shows that Mrs. Zaryski hired an employee for desk relief, that employee could work no more than 8 hours a week and only when Mr. and Mrs. Zaryski were both absent from the property. Those decisions were not independently made by Mrs. Zaryski, but were based directly on operational policies established by Northland, which allowed the individuals to be absent from the property at the same time, but which also identified how much co-incidental absence was acceptable. Also, when Mrs. Zaryski tried to hire casual labour to assist in flood cleanup, this decision was reversed by head office. The notation made at head office on the payroll summary submitted by Mrs. Zaryski says: "Pay him cash at the property. Casual labour is not paid by payroll."

Northland has not demonstrated that either Mr. or Mrs. Zaryski had anything other than an administrative role in matters relating to the housekeeping staff. The evidence of Mrs. Zaryski was that she did no more than provide housekeeping with a list of rooms, if any, that needed to be cleaned that day and "rubber stamped" the decisions of the head housekeeper about adding new staff in housekeeping. In any event, the number of persons employed in housekeeping is not particularly significant. Mrs. Zaryski said that she was told during her training that on average it should take one housekeeper ½ hour to clean a room. It is the number of rooms rented that will generally determine the number of

housekeeping staff required each day and the amount of work that will be available to them.

It is also clear that Majetic was not employed for the primary purpose of supervising and directing other employees. The evidence showed his primary responsibility was, like Mr. Zaryski, to do the maintenance at the motel. The expectations of Northland about his duties and responsibilities are demonstrated by two facsimiles sent to the motel by Grayson, in which she instructed him to paint the public washrooms, repair the stairs to the basement, weed the flower bed at the back of the building, cut the grass, patch a hole in the ceiling of the washrooms and tidy the area in front of the inn. He was instructed by Grayson to complete these tasks within time limits and authorized, also by Grayson, to acquire paint and other materials necessary to complete the jobs.

My conclusion relating to Early is more difficult. The key question in her case is whether there is sufficient supervising and directing of other employees to conclude that function was her “primary” employment responsibility and, as a result, bring her within the definition of manager under the *Act*. There was evidence that she was involved in hiring, disciplining and terminating employees, scheduling employees, dealing with staff problems and co-ordinating with the manager of the restaurant to allow employees of the restaurant to work in housekeeping. All of these matters are consistent with the type of power and authority accorded a person whose primary employment duties consist of directing and supervising other employees. She conceded in her evidence that she was hired to “manage” the Blue River property.

On the other hand, she said, in regard to the above matters, that she had no real independent authority or discretion relating to any of those things. She felt constrained to seek approval on those matters by the requirement, emphasized by Helen Pakka during their training, that things had to be done according to the policies and procedures established by the Sandman and which were contained in the manual. She said the final authority in any of those matters did not rest with her, but with Grayson or head office, although she did have some input.

The problem of determining whether the circumstances present in the above two paragraphs result in a conclusion that she is a manager was addressed by the Tribunal in *Re Amelia Street Bistro, supra*, as follows:

We also accept that in determining whether a person is a manager the remedial nature of the *Act* and the purposes of the *Act* are proper considerations. The Director raised a concern that an interpretation of manager which did not accept the limited scope of exclusion from the minimum standards of the *Act* could have serious consequences for persons in positions such as foreman and first line supervisor, all of whom spend a significant amount of time supervising and directing other employees but frequently do not exhibit a power and authority typical of a manager. As we stated above, the degree to which some power and authority typical of a manager is present and being exercised by an employee are necessary

considerations to reaching a conclusion about the total characterization of the primary employment duties of that employee.

Typically, a manager has a power of independent action, autonomy and discretion; he or she has the authority to make final decisions, not simply recommendations, relating to supervising and directing employees or to the conduct of the business. Making final judgments about such matters as hiring, firing, disciplining, authorizing overtime, time off or leaves of absence, calling employees in to work or laying them off, altering work processes, establishing or altering work schedules and training employees is typical of the responsibility and discretion accorded a manager. We do not say that the employee must have a responsibility and discretion about all of these matters. It is a question of degree, keeping in mind the object is to reach a conclusion about whether the employee has and is exercising a power and authority typical of a manager. It is not sufficient simply to say a person has that authority. It must be shown to have been exercised by that person.

(page 6)

There are two points to be drawn from the above excerpt: first, in the context of excluding a person from the *Act* or any part of it, the burden of establishing the basis for the exclusion lies with the person asserting it; and second, because of the consequences to an individual of such a conclusion, there must be clear evidence justifying that conclusion. The scope of exclusion from the *Act* is limited.

In this case, Northland has failed to establish, on balance, that Early was exercising a power and authority typical of a manager. As the Tribunal stated in *Re Amelia Street Bistro*, above, it is a question of degree and the evidence presented does not show a sufficient degree of responsibility and discretion in those relevant matters to allow a conclusion that her primary employment duties consist of supervising and directing other employees.

There are a number of reasons for this finding. As I indicated above, hiring persons for housekeeping and assigning their work is not, in the context of operating a Sandman motel, a particularly significant exercise of discretion and judgment. The procedure manual contains guidelines about when the rooms should be cleaned, how long that should take and the standard that should be met. The procedure manual also sets out a disciplinary procedure, which tells the resident manager that an employee must be given a series of warnings before termination is considered. Grayson acknowledged that Early had consulted with her about terminating Melinda Johnston and that she had asked Early whether Johnston had been warned.

My conclusion that the power and authority exercised by Early in supervising and directing other employees was not demonstrative of a manager is reinforced by other evidence. She was unable to hire desk relief and took no time off for the first 46 days of her employment. She was required to obtain approval from either Grayson or head office for operational

expenditures over \$100.00 (unless it was in the nature of a recurring expense), for all capital expenditures and for any supply requisitions. She had no authority to authorize a pay raise for staff. That had to be approved by Grayson. These limitations are not consistent with a conclusion that Early exercised a power and authority typical of a manager.

The above excerpt from *Amelia Street Bistro* also answers the argument that I should consider that the individuals *might* have performed employee evaluations and become involved in the preparation of the annual budgets for their property had they remained employed for a longer period with Northland. Any conclusion about whether a person is a “manager” will be based upon the actual authority exercised by the person, not on the authority someone says they might have.

Mr. Johnston submitted that the administrative duties and responsibilities of the individuals, such as authorizing room rate reductions, engaging in a “public relations” function with customers and potential customers, handling emergency situations, including occupancy issues, and generally performing the volume of administrative tasks associated with the day to day operation of the property justified the managerial exclusion. In support of that argument he presented a U.S. Court of Appeals decision, *Reich v. Avoca Motel Corp.*, 3 WH Cases 2d 458. That decision does not assist Northland. It is based on a specific statutory provision in the American labour standards legislation that creates an “administrative” exclusion. The *Act* does not contain such an exclusion. The Tribunal has recognized that a person may have very important administrative responsibilities in their employment without meeting the definition of “manager”. Unless the administrative responsibilities are connected with the supervision and direction of employees or are performed by a person in an executive capacity, they will not result in an exclusion under the *Act*. In this case, the administrative responsibilities are neither connected to the supervision and direction of other employees nor are they being performed by a person employed in an executive capacity. Accordingly, the performance of those responsibilities do not advance the position of Northland.

The first issue in this appeal is dismissed.

The second issue is whether the delegates erred in determining the “hours of work” of the individuals. Northland argued that the burden was on the individuals to prove they were “at work” for all of the hours claimed. In the context of an original complaint, I agree with that statement. However, the delegates concluded the individuals had met that burden, at least to the extent accepted by the delegates in their respective Determinations.

For Early and Majetic, the delegate, while believing Early and Majetic worked for longer than 8 hours a day, concluded it was appropriate and reasonable to accept, for the purposes of the complaint, that each worked 8 hours a day. For Mr. and Mrs. Zaryski, the delegate reviewed the information provided by them and concluded the documents supported a claim that they each worked 10 hours a day.

Northland challenges those conclusions. As in any appeal before the Tribunal, the appellant bears the burden of persuasion. Along with that burden, they bear an evidentiary burden. The burden is on Northland to establish an evidentiary basis upon which this issue may be argued. In my opinion they have met that burden in respect of Mrs. Zaryski.

The conclusion of the delegate that Mrs. Zaryski worked the equivalent of 10 hours a day, six and seven days a week cannot be sustained on the material before me. The material showed that Mrs. Zaryski's primary daily responsibilities related to attending the front desk. From 6:00 am to 11:00 am she performed some standard administrative functions, such as preparing the rooms list for housekeeping, answering phones, sending occupancy information to Kamloops and head office and ordering supplies. She cleaned the area of the front desk, checked out residents and, if necessary, assisted in housekeeping. From she was off at 11:00 am, returning to the front desk at to 2:00 pm to attend to any reservations that may have been facsimiled into the motel, answer the telephone and to check in customers. She was off at 7:30 or 8:00 pm. On most occasions she took meal breaks in both periods. When the front desk was slow, she was able to retire to her residence, which was located behind the front desk area, where she was, in the circumstances, "on call". An employee on call in their residence is not performing "work" for their employer. I have accepted that her residence also served as her office and I have included a reasonable amount of time as office work in my conclusion about her hours of work in a day. I have also accepted that there was additional work caused by the problems experienced at the inn with flooding, leaking and the breakdown of some equipment. However, the evidence indicates that these matters were related to the maintenance of the inn and, for the most part, are accounted for in the hours of work for Mr. Zaryski.

Northland demonstrated that commencing early September, when Mr. and Mrs. Zaryski were hired, business at the motel declined and occupancy was low throughout their term of employment, most significantly, between November 1, 1995 and April 30, 1996 it had declined to a level where typical daily occupancy was less than 24 rooms. Based on the number of residents admitted to the motel, I agree with the position of Northland and find it probable that Mrs. Zaryski would have worked fewer hours than what she claimed to have worked as the daily occupancy levels of the motel declined. She claimed she worked an average of just over 10 hours a day throughout her entire period of employment. The delegate accepted she had worked 10 hours a day (when a full day was worked). No adjustment was made, as I find it should have, for the significant decline in the business of the motel leading up to and during the above period. Accordingly, her daily hours of work will be adjusted as follows:

September 6, 1995 to September 30, 1995	10 hours a day
October 1, 1995 to October 31, 1995	9 hours a day
November 1, 1995 to April 30, 1996	8 hours a day
May 1, 1996 to May 30, 1996	9 hours a day

The above adjustments apply only to those days which currently show Mrs. Zaryski working 10 hours a day. It does not affect those days on which the delegate concluded she

worked less than 10 hours. Also, it may change the hourly rate upon which the wage calculations will be based.

Northland has not shown the conclusion of the delegates regarding the hours of work of any of the other individuals was wrong or unreasonable and the appeals relating to those individuals are dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order:

- (1) the Determination dated December 9, 1997 be confirmed in the amount of \$5,059.33 together with whatever further interest that may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance; and
- (2) the Determination dated January 7, 1998 the matter is referred back to the delegate to calculate the wages and interest payable to Mrs. Zaryski based on my findings relating to her entitlement. The conclusions of the delegate relating to the entitlement of Mr. Zaryski are confirmed and additional interest shall accrue on that amount, pursuant to Section 88 of the *Act*, from the date of issuance.

David Stevenson
Adjudicator
Employment Standards Tribunal