

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-

Richard Park Operating as Subway  
("Subway")

of a Determination issued by -

The Director Of Employment Standards  
( the "Director")

-  
ADJUDICATOR: Norma Edelman  
File No. 98/066  
DATE OF HEARING: April 3, 1998  
DATE OF DECISION: April 7, 1998



work site, and receive a free sandwich and drink, and take a break whenever they are not busy. He said that Butterfield chose the latter option and she received a 15 minute break each shift. During the 15 minute break she prepared her free sandwich and drink. It is Park's position that the value of the sandwich and drink and the 15 minute break more than covers one-half hour of pay. Park also stated that during each shift two people were working so there was enough time to take breaks. He submitted a document (Document #2) which is condensed from the Subway "Control Sheets" which shows the amount of minutes it took to make sandwiches and the amount of minutes left to perform other tasks on each of Butterfield's shifts.

Subway further claims that Butterfield at most worked an additional 5 minutes on 23 shifts doing inventory and cash counts and it is willing to pay \$13.34 for that time only. Park submitted "Cash in Sheets" to support this position. He also submitted sign-in and sign-out sheets for the period May 28-June 26 which do not indicate that Butterfield worked beyond the end of her regularly scheduled shift.

Butterfield stated that Subway required her to have her meal break in the store and that she had to work if it got busy. She had no choice and could not leave the store. She worked with only one other person and when they were busy they could not have an uninterrupted break. She said that Park told her she received a free sandwich and drink for not getting proper breaks. Butterfield also stated that she worked an additional 10 minutes each day (except for August 5, 1997) and was not compensated for this work. She said the till tape came at 5 p.m. and therefore she had to work beyond the end of her shift to do the cash and inventory. She said she did not complete the sign-in and sign-out sheets every day and she could not recollect if she indicated on these sheets that she worked an additional ten minutes each shift. Butterfield also stated that if an employee's shift was completed before 4:30 p.m., then the employee would not complete the "Cash in Sheets".

## ANALYSIS

Section 32(1) of the *Act* provides that an employer must ensure that no employee works more than 5 consecutive hours without at least a one-half hour meal break. Section 32(2) of the *Act* states that when an employer requires an employee to be available for work during a meal break, the employer must count the meal break as time worked by the employee.

In this case, I am satisfied that Butterfield was required to be available for work during her meal breaks. There is no dispute that Butterfield remained on the work site at all times and received a free sandwich and drink each shift. However, I do not accept that the time Butterfield spent on preparing the sandwich and drink constituted a break. Nor do I accept that the value of these items can be used to offset any wages owed to Butterfield. Section 20 of the *Act* does not contemplate payment of wages in any form other than Canadian currency, a cheque, draft or money order.

Under Section 28 of the *Act* an employer must keep records of the hours worked by an employee. Section 31 of the *Act* states that an employer must display hours of work notices in the workplace and these notices must include the scheduled meal breaks of an employee. There is no evidence that Subway kept records of Butterfield's breaks or displayed any notices of her breaks and Parker's Document # 2 is of no assistance in determining the precise time that Butterfield received meal breaks or the duration of the breaks. As the Appellant, it is Subway's burden to show that Butterfield received a clear and uninterrupted thirty minute break on each shift where she worked more than 5 consecutive hours. Subway has not met that burden. Accordingly, I concur with the delegate that Butterfield is owed one-half hour of pay for 42 days.

Regarding the work performed doing inventory and cash, I find there is insufficient evidence to establish that Butterfield worked an additional 10 minutes on 55 shifts. The time sheets do not show Butterfield worked the extra time and the "Cash in Sheets" confirm Parker's position. The "Cash in Sheets" also show that employees did complete these sheets when their shifts ended before 4:30. Consequently, I conclude that Butterfield is owed \$13.34 which is the amount calculated by Subway.

In summary, I find that Butterfield is owed \$147.00 for meal breaks plus \$13.34 for additional time worked doing cash and inventory , plus 4% vacation pay, for a total of \$166.75.

## **ORDER**

I order pursuant to Section 115 of the *Act* that the Determination dated January 12, 1998 be varied to show that Butterfield is owed \$166.75 by Subway together with whatever interest that may have accrued pursuant to Section 88 of the *Act* .

Norma Edelman .- Adjudicator  
Employment Standards Tribunal