

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C.38

- by -

Sophias Restaurants Ltd

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: John M. Orr

FILE NO.: 96/593

DATE OF HEARING: January 8, 1997

DATE OF DECISION: January 8, 1997

DECISION

APPEARANCES

| | |
|--------------|--------------------------------------|
| Nick Chelmis | Representing Sophias Restaurants Ltd |
| Ron Corrigan | For the Director |

OVERVIEW

This is an appeal by Sophias Restaurants Ltd (Sophias) pursuant to Section 112 of the *Employment Standards Act* (the "Act") from a Determination, number CDET 004072, issued on September 20, 1996 by the Director of Employment Standards ("the Director").

The Determination found that Sophias had contravened Sections 34(2), 44, 45, 46(1), and 46(2) of the *Act* relating to the non-payment of the 4 hour minimum daily hours and certain Statutory holiday requirements. The determination found that Sophias was liable to pay to an employee, Sheldon Cohen, a total amount of \$2,087.01 including adjusted holiday pay and interest.

Sophias appealed and alleged that the employee, Sheldon Cohen, on the dates that he worked less than the four hours absented himself from work without the consent of the employer and at the time only claimed for the hours worked.

ISSUE TO BE DECIDED

The issue in this case is whether the employee absented himself from work without the prior permission of the employer and was therefore only entitled to payment for the hours worked.

FACTS

At the hearing of this appeal the employee, Sheldon Cohen, failed to appear despite having been duly notified of the time and place of the hearing and despite having had this information confirmed with him three days prior to the hearing. Mr Ron Corrigan appeared for the Director and Mr Nick Chelmis appeared for Sophias. The Hearing was scheduled to commence at 9:00 a.m. A phone call was placed to the home of the employee at 9:10 a.m. and a message left on an answering machine and the hearing was delayed until 9:30 a.m. to allow Mr Cohen time to appear. The hearing commenced at 9:30 a.m. in the absence of Mr Cohen.

Mr Chelmis testified that Mr Cohen worked at times that Mr Chelmis, the owner, was not on the premises and was required and trusted to work at least the minimum four hours at all times. He testified that where the employee worked less than the statutory 4 hours it was without the prior knowledge and consent of the employer. He was therefore only paid for those hours that he worked. Mr Corrigan on behalf of the Director took the position that where an employee requests

to leave work before working the four hours the employee is only entitled to be paid for the hours worked.

Mr Corrigan agreed that this would also apply if the employee absented himself without permission prior to completing the four hours of work. In the absence of any evidence to the contrary I find that the employee was paid for all hours worked and that any hours worked less than four were at his own volition without the consent of the employer and therefore beyond the control of the employer.

Mr Chelmis agreed that certain statutory holiday pay adjustments were not paid in full and Mr Corrigan calculated that these adjustments totalled \$205.54 and the adjusted holiday pay would be a further \$8.18. Mr Chelmis agreed with these calculations and I find that the employer is liable to pay to the employee the total amount of \$212.72 plus any accruing statutory interest.

ORDER

Pursuant to Section 115 (1) of the *Act* Determination No. CDET 004072 is varied to show that the total amount payable by the employer, Sophias Restaurants Ltd, to the employee, Sheldon Cohen is \$212.72 together with any accrued statutory interest.

John Orr
Adjudicator
Employment Standards Tribunal