

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 -

U-Haul Co.(Canada) Ltd.

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: John M. Orr

FILE No: 1999/677

DATE OF HEARING: January 11, 2000

DATE OF DECISION: January 24, 2000

DECISION

APPEARANCES:

David Main

Counsel for Norm Propp

Mari A. Worfolk

Counsel for U-Haul Co. (Canada) Ltd.

OVERVIEW

This is an appeal by U-Haul Co. (Canada) Ltd. ("U-Haul") pursuant to Section 112 of the Employment Standards Act (the "*Act*") from a Determination (No. 059263) dated October 18, 1999 by the Director of Employment Standards (the "Director").

U-Haul engaged Norman Propp ("Propp") in a position entitled "Area Field Manager". Propp's involvement with U-Haul was terminated in September 1998. Subsequently he made a claim for overtime and other employment benefits. U-Haul maintained that Propp was a "manager" under the *Act* and was therefore not entitled to overtime. A delegate of the Director investigated and determined that Propp was, in fact and despite his title, an employee and not a manager as these terms are defined in the legislation and as interpreted by the Tribunal.

U-Haul has appealed the determination on the basis that the delegate erred in interpreting both the facts and the legislation and asserts that all times Propp was, both in title and in fact, a manager.

THE HEARING AND RESOLUTION

Section 2 of the *Act* sets-out the purposes of the legislation and these include the promotion of fair treatment of both employees and employers and to encourage open communication between them. It also includes the purpose to provide fair and efficient procedures for resolving disputes. In accordance with the stated purposes I discussed the case with counsel for the parties and following such discussions encouraged counsel to seek a resolution of the issues between them.

It was apparent that U-Haul maintained strongly that the Area Field Managers were in fact "managers" whereas Propp maintained that he was an employee entitled to his overtime. Nevertheless, goodwill and sound judgement prevailed and the parties settled the matter on a "without prejudice" basis and agreed that the Determination should be cancelled.

Having heard from the parties I conclude that it is in the interest of the parties and in accordance with the stated purposes of the *Act* that the determination be cancelled.

ORDER

Pursuant to Section 115 of the *Act* I order that the Determination is cancelled.

John M. Orr
Adjudicator, Employment Standards Tribunal