

An appeal

- by -

Clancey's Family Restaurant Ltd.

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: Carol L. Roberts

FILE No.: 2003A/302

DATE OF DECISION: February 3, 2004

DECISION

SUBMISSIONS

Kay Gallagher	On behalf of Clancey's Family Restaurant Ltd.
Narinder Hayer	On her own behalf
Gorgeana Melnychuk	On her own behalf
Rhona Beck	On behalf of the Director of Employment Standards

OVERVIEW

This is an appeal by Kay Gallagher on behalf of Clancey's Family Restaurant Ltd. ("Clancey's"), pursuant to Section 112 of the *Employment Standards Act* ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued October 22, 2003.

Seven former employees of Clancey's filed complaints with the Director alleging that they were owed wages, compensation for length of service and vacation pay.

Following an investigation, a delegate of the director determined that Clancey's had contravened sections 18, 58 and 63 of the Act, and that the employees were entitled to wages, vacation pay, compensation for length of service and interest in the total amount of \$4,896.57. The delegate also imposed a \$1,000 penalty on the employer, bringing its total liability to \$5,896.57.

Ms. Gallagher contends that the delegate incorrectly calculated the amounts owing to the employees.

The parties were advised by the Tribunal's Vice Chair that the appeal would be adjudicated based on their written submissions and that an oral hearing would not be held. This decision is based on written submissions.

ISSUE TO BE DECIDED

Whether the Director erred in calculating the amount of wages owed to employees.

FACTS

Clancey's operated a restaurant that closed suddenly on August 13, 2003. There was no dispute that the seven employees were entitled to wages. At issue before the delegate was the amount of wages owed and whether the employees were entitled to compensation for length of service. Separate appeals have addressed a third issue dealt with by the delegate, that being who the directors of the company were.

The delegate concluded that the employees were entitled to wages in the amount indicated above.

ARGUMENT

Ms. Gallagher asserted that the delegate added up the time cards incorrectly.

The delegate acknowledged that she did not have original time cards, and the copies she had were not completely legible. She agreed she would review the original cards, if provided, to determine their accuracy.

Since the Determination was issued, some of the employees have received payments. The delegate submits that some of the employees have not received compensation for length of service. The delegate acknowledged that one employee, Jeannette Hamel, has been paid in full.

ANALYSIS

Section 18(1) of the *Act* provides that an employer must pay all wages owing to an employee within 48 hours after the employer terminates the employment.

Section 63(1) provides that an employer must pay an employee an amount equal to one weeks wages as compensation for length of service. This liability is discharged where appropriate notice is given, where the employee retires, or where the employee is terminated for cause. None of these situations applies to any of the employees employed by Clancey's. Therefore, I find that compensation for length of service is owed.

The delegate arrived at her Determination based on faxed copies of time cards. She acknowledges that the facsimile copies did not transfer well, and has agreed to review the originals.

ORDER

I Order, pursuant to Section 115 of the Act, that the Determination dated October 22, 2003 be referred back to the delegate in light of her acknowledgement that one of the employees has been paid in full. The original time cards for the balance of the employees are to be produced by Ms. Gallagher on or before February 23, 2004, for the delegate's review to determine whether the amounts determined owing are correct.

Carol L. Roberts
Adjudicator
Employment Standards Tribunal