



An appeal

- by -

New Vision Enterprises Ltd. carrying on business as Quality Hotel

- 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 (as amended)

**TRIBUNAL MEMBER:** Carol L. Roberts

**FILE No.:** 2009A/007

**DATE OF DECISION:** March 23, 2009

## DECISION

### SUBMISSIONS

Fadia Sorial on behalf of New Vision Enterprises Ltd.  
Sherri Wilson on behalf of the Director of Employment Standards

### OVERVIEW

1. This decision arises out of an appeal by New Vision Enterprises Ltd. (“New Vision”), pursuant to Section 112 of the *Employment Standards Act* (“the Act”), against a Determination of the Director of Employment Standards (“the Director”) issued September 19, 2008. On December 17, 2008, I issued a decision concluding that the delegate had erred in calculating wages owed to Mabinty Kanu and referred the matter back for recalculation of the amounts owing. (BC EST #D122/08)
2. The delegate recalculated the amount owing to Ms. Kanu. She determined that Ms. Kanu was entitled to 36.5 hours of overtime, together with vacation pay, in the amount of \$274.56. The delegate explained her original statutory holiday pay Determination and asked that it be confirmed.
3. New Vision disputes the delegate’s recalculations.
4. New Vision also disagrees with my December 17, 2008 decision confirming the delegate’s Determination that Ms. Kanu was entitled to compensation for length of service. This is not an issue that can be addressed in the context of a referral back and I have not addressed it further.
5. Section 36 of the *Administrative Tribunals Act* (“ATA”), which is incorporated into the *Employment Standards Act* (s. 103), and Rule 17 of the Tribunal’s Rules of Practice and Procedure provide that the tribunal may hold any combination of written, electronic and oral hearings. (see also *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575). This appeal is decided on the Report to Tribunal following the referral back and the submissions of the parties.

### ISSUES

6. Did the delegate err in calculating Ms. Kanu’s overtime wage and statutory holiday pay entitlements?

### FACTS AND ARGUMENT

7. As noted in the original decision, New Vision was unable to comply with the Director’s demand for Employee records as a result of a computer malfunction. However, it gave the delegate details of the total regular and overtime hours each pay period for Ms Kana from April 16, 2007 and December 15, 2007 as well as her records of work in the form of hard copies of her housekeeping assignments. It was on these records that the delegate made her decision.
8. New Vision now says that the housekeeping assignment form relied on by the delegate is incorrect and that this was explained to her during the investigation. It says that there was no way to change the timekeeping sheet once prepared if the housekeeper did not show up for work. Instead, the no show was reported in

writing on the back of the room assignment. It argues that Ms. Kanu did not show up for work on August 6, 2007 and that she should not be paid overtime wages for that day.

9. New Vision also says that the delegate erred in finding that Ms. Kanu had not been paid for October 8, 2007. It says that although her payment was disclosed on the payroll submission, the delegate failed to notice the payment.
10. Finally, New Vision disputes the delegate's overtime calculations which were one half hour different than the employer's calculations. It submits it had a "deal" with housekeepers that they got paid for a daily lunch break as well as other benefits without deductions. It says that it also paid Ms. Kanu for 8 hours whether or not she worked the full 8 hours.
11. The delegate submits that the report speaks for itself.

## ANALYSIS

12. As the Tribunal stated in *Renshaw Travel* (BC EST #RD085/08)

The occasions on which an alleged error of fact amounts to an error of law are few. In order to show that an error of fact amounts to an error of law an appellant must show what the authorities refer to as palpable and overriding error, which involves a finding that the factual conclusions of a delegate, or the inferences drawn from those factual conclusions, are inadequately supported, or are wholly unsupported, by the evidentiary record, with the result that there is no rational basis for the finding, and so it is perverse or inexplicable. Put another way, an appellant will succeed only if it establishes that no reasonable person, acting judicially and properly instructed as to the relevant law, could have come to the determination (see *Gemex Developments Corp. v. B.C. (Assessor)* (1998) 62 BCLR 3d 354; *Delsom Estates Ltd. v. British Columbia (Assessor of Area 11 – Richmond/Delta)* [2000] BCJ No.331). This means that it is unnecessary in order for a delegate's decision to be upheld that the Tribunal must agree with the delegate's conclusions on the facts. It means that it may not be an error of law that a delegate could have made other findings of fact on the evidence, but did not do so. It also acknowledges that the weight to be ascribed to the evidence is a question of fact, not of law (see *Beamriders Sound & Video* BC EST #D028/06).

13. I have reviewed the delegate's analysis of Ms. Kanu's overtime and statutory wage entitlement. I am not persuaded that her decision was perverse or inexplicable on the evidence she had before her and I decline to interfere with her conclusion.

## ORDER

14. I Order, pursuant to Section 115 of the *Act*, that the delegate's calculations of Ms. Kanu's overtime wage calculation and statutory wage entitlement be confirmed in the total amount of \$1,188.12.

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**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**