

**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 -

Craigs Automotive Ltd.  
("Craigs")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** C. L. Roberts

**FILE NO.:** 96/084

**DATE OF DECISION:** April 3, 1996

**DECISION**

**OVERVIEW**

This is an appeal by Craigs Automotive Ltd. ("Craigs"), pursuant to Section 112 of the Employment Standards Act ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued on January 3, 1996 (Determination # 000628) wherein the Director found that the employer had contravened Sections 35 and 63 of the Employment Standards Act in failing to pay overtime wages and compensation in lieu of proper notice. The Director ordered that Craigs pay \$1200.76 to the Director of Employment Standards.

**FACTS**

Jon Doucette ("Doucette") was employed with Craigs from February 7, 1994 to June 7, 1995. His duties included bookkeeping, ordering stock, banking, taking inventory and service station attendant. The Director found that Doucette, although performing some assistant manager functions, was an employee as he had no authority in respect of the staff of the company. The Director determined that Doucette was not exempt from the overtime provisions of the Act and ordered payment for overtime wages.

There was no dispute that Doucette was late on at least three occasions during the last two months of his employment. There was no dispute to the finding that although there was at least one verbal warning and one 'admonishment', there were no written warnings. The Director found that progressive discipline had not been applied and, therefore, just cause had not been established. Severance pay was awarded.

**ISSUE TO BE DECIDED**

There were two issues on appeal:

- 1) Whether Doucette was in fact an assistant manager and therefore not entitled to overtime wages; and
- 2) Whether the Director correctly determined that Craigs had not established just cause for terminating Doucette. The Employer contends that the employee was properly terminated for cause and that the Director is biased against him.

## ANALYSIS

This appeal was by way of a written submission by Mr. Moir. He contended that the Director erred in his determination in finding that Doucette was an employee, and that he was improperly terminated. I have reviewed the documents provided by Doucette upon filing the appeal, the documents submitted to the Director by Craigs, the determination of the Director, and the letter of appeal in arriving at my decision.

On the basis of the evidence presented, I confirm the decision of the Director.

I shall deal with each issue separately.

### Overtime wages

Craigs contends that Doucette was not entitled to overtime wages on the basis that he was an assistant manager. Managers are not entitled to overtime pay by virtue of Section 32 of the *Employment Standards Regulations*.

A manager is defined in the *Regulations* as a "person whose primary employment duties consist of supervision and directing other employees."

I am unable to conclude, on the evidence, that the Director erred in determining that Doucette was an employee.

Although Doucette may have performed functions other than a service station attendant such as ordering stock, managing the day to day operation of the shop when the manager was absent, banking and bookkeeping, there was no evidence to suggest that his primary employment duty consisted of supervising or directing employees. The mere performance of clerical duties in addition to those of gas station attendant does not transform his status into one of a manager. Doucette did not have authority to hire and fire other employees, or evaluate their performance. Although there was some evidence that he exercised minimal supervisory duties over some employees, it did not constitute his primary employment duty.

I note that on the Record of Employment (ROE) the Employer identifies Doucette as a "Service Station Attendant". Although an employee's status is determined on the duties performed rather than any title which might be assigned, the characterization differs greatly from the position advanced by Craigs in this appeal.

I am unable to find that the Director erred in her Determination that Doucette was entitled to overtime pay and deny the appeal in this respect.

### Severance pay

Section 63 of the *Act* provides that the Employer is liable to compensate an employee for an amount equal to two weeks wages as compensation for length of service unless, among other things, the employee is dismissed for just cause.

Craigs contends that there was sufficient grounds on which to terminate Doucette's employment, including several incidents of lateness, and taking loans from the till after being instructed not to do so. He further contends that Doucette was continually warned that if the incidents continued, his employment would be terminated. The Director found that Craigs had not established that enough warnings were given to Doucette to substantiate "just cause" for termination.

The onus is on Craigs to establish just cause. Just cause includes criminal acts, gross incompetence or a significant breach of workplace policies. It also includes minor infractions of workplace rules, or unsatisfactory conduct where the conduct is repeated despite clear warnings to the contrary and progressive disciplinary measures.

On the evidence presented, I am satisfied that Doucette was late on at least two occasions, and borrowed money from the till contrary to instructions not to do so. I accept that Doucette was verbally warned about his lateness. Although there is a dispute as to the content and number of the warnings, there is no evidence to suggest that the warnings were in writing, nor that Doucette was made aware that continued lateness or other behaviour was regarded as a serious infraction of the workplace rules and that further contraventions would constitute grounds for termination. I note that Doucette's pager was removed from him on May 10, but there is insufficient evidence to establish that there is any connection between that action and Doucette's conduct.

I am not satisfied that progressive disciplinary measures were instituted, or that Doucette failed to respond to them. Accordingly, I find no basis on which to find that the determination by the Director was incorrect.

I am unable to find that Craigs  
+ has discharged the burden of establishing that the Director's decision was biased or in error, and I deny the appeal.

**ORDER**

I Order, pursuant to Section 115 of the Act, that Determination #000628 be confirmed.

*“C.L. Robert”*

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**C. L. Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**

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