

An appeal

- by -

Tina Argenti

- 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: Paul E. Love

FILE No.: 2001/678

DATE OF DECISION: January 23, 2002

DECISION

OVERVIEW

In a Decision issued May 30, 2001, pursuant to an appeal of a Determination dated March 15, 2000, made pursuant to the *Employment Standards Act, R.S.B.C. 1996, c 113* (the "*Act*"), another Adjudicator determined that an Employee, Ms. Tina Argenti, was entitled to wages as she was required to be available for work through her meal break, overtime wages and vacation pay ("wages"). The calculation of the amount of the wages was referred back to the Delegate of the Director of Employment Standards ("Delegate") by the Adjudicator. This Decision relates to the amount of the calculation. The Delegate prepared a report which was submitted to the Employer and Employee.

While the Employee did not comment on the calculations in the report, the Employer submitted that the calculations were incorrect. The Employer argued that there was no entitlement to wages arising from a requirement to work through the meal break. This issue was determined by the original Adjudicator, and therefore is not before me. The Employer argued that the Delegate incorrectly calculated the wages for a period which included ownership of the business by another Employer. The calculation was based on the time period and records for which Ms. Kim was the principal of the Employer. I therefore confirm that Ms. Argenti is entitled to the sum of \$ 1693.96, plus interest calculated in accordance with s. 88 of the *Act*.

ISSUE

Did the Delegate err in the calculations of the entitlement arising from the requirement to be available for work during the meal break?

THE FACTS AND ANALYSIS

Ms. Tina Argenti was employed as a prep cook/deli counter server with a deli operated first by Gary Saik, and then by Coast Deli "O" Inc. Ms. Sue Kim purchased the business on or about October 10, 1997. Ms. Argenti was terminated from her employment on September 17, 1998. She filed a complaint with the Employment Standards Branch alleging that she was owed wages for being required to be available for work during her meal break, overtime wages, and vacation pay. She also sought compensation for length of service.

On May 30, 2001, another Adjudicator confirmed a Determination that Tina Argenti was not dismissed for just cause. The Adjudicator found that the Employer required Ms. Argenti to be available for work during the meal break. The Adjudicator referred the matter to the Delegate for a calculation of the amount of wages owing and wages for meal breaks.

The Delegate prepared a report dated September 17, 2001 which contained the following wage calculation:

Calculation of meal breaks: 221 shifts of over 5 hours 221 x ½ hour x \$9.00 plus 4 % vacation pay	\$1034.28
Overtime wages owing as per Determination	\$95.94
Vacation pay owing as per Determination	\$5.99
Regular wages owing as per Determination less 63.00 as ordered (\$65.52 minus \$63)	\$2.52
Termination pay as per Determination	\$272.02
Total	\$1410.75
Plus interest from September 17, 1998 to March 15, 2000	\$138.68
Plus Interest from April 8, 2000 to September 17, 2001	\$143.93
Total wages and interest owing	<u>\$1693.96</u>

The Delegate calculated the entitlement based on the term of the employment relationship between October 16, 1997 to September 17, 1998. Ms. Argenti's employment was terminated on September 17, 1998. The calculation was submitted to the parties for comment.

The Employer argues that there should be no entitlement at all, however, the Adjudicator found that there was an entitlement, and the only issue is the amount of the entitlement. It is not my task to disturb the findings of fact made by the Adjudicator. The Employer objected to the calculation arguing that Sue Kim, the principal of the Employer, was only involved in the business from October 10, 1997, and that the calculation should run from that date, rather than June 25, 1996. The Employee has made no submission responsive to the issue of correctness of the calculation.

DECISION:

In the Determination, the Delegate calculated the entitlement to wages from October 16, 1997 to September 17, 1998 based on time sheets and payroll records of the Employer. Ms. Kim was the owner of the business during this time frame. The Delegate therefore used the appropriate date for the calculation of the Employee's entitlement. I do not accept the submission of the

Employer that the Delegate has made the calculation based on a time period commencing June 25, 1996.

In my view, the Delegate has calculated the amounts due by the Employer, and the Employer has shown no error in the calculation. I confirm that Coast Deli "O" Inc. must pay to Ms. Argenti the sum of \$1,693.96 together with any interest accruing, calculated pursuant to s. 88 of the *Act*.

ORDER

The Determination, dated March 15, 2000, is varied to show Ms. Argenti is owed the sum of \$1,693.96 together with interest calculated in accordance with s. 88 of the *Act*.

Paul E. Love
Adjudicator
Employment Standards Tribunal