

An appeal

- by -

Lonestar Custom Sandblast & Paint Inc.  
("Lonestar" or the "Appellant")

- 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:** Ib S. Petersen

**FILE No.:** 2002/618

**DATE OF DECISION:** February 12, 2003

## DECISION

### OVERVIEW

This is an appeal by the Employer, Lonestar, pursuant to Section 112 of the *Employment Standards Act* (the “Act”), of a Determination of the Director issued on November 21, 2002. The Determination concluded that Mr. Andreas Bronk was owed \$3,927.74 by her Employer on account of overtime and regular wages.

Lonestar is in the business of sandblasting and painting vehicles. Mr. Bronk worked at the business from April 29, 1997 to April 30, 2001 as a sandblaster at an hourly rate. From May 1, 2001 he worked as a manager at a monthly salary of \$3,400 until his employment came to an end in August 2001. As I understand the Determination, the award relates to overtime wages prior to Mr. Bronk assuming the title of manager, the bulk of it for 2000, and to one week’s regular wages (April 9-13, 2001).

The Appellant took the position before the Delegate that Mr. Bronk was a “manager” before he assumed the title and, thus, not entitled to overtime wages. From the Employer’s submission to the Tribunal, I understand that he was a “foreman.” The Employer also suggested that Mr. Bronk, in any event, was well compensated through cell phone and vehicle benefits. The Delegate did not accept the Employer’s position. He concluded that Mr. Bronk was not a manager at the material time, prior to May 1, 2001.

### FACTS AND ANALYSIS

As the Appellant, the Employer has the burden to persuade me that the Determination is wrong. The burden on the Appellant is to show on the “balance of probabilities” that the Delegate erred. In the circumstances, I am not persuaded that it has met the burden and, therefore, the appeal is dismissed.

The Appellant expressly argues that the Delegate failed to observe the principles of natural justice in making the Determination. There is, in my view, nothing to suggest that is the case and that ground of appeal is dismissed.

The nub of the Appellant’s case is, as it was before the Delegate, that Mr. Bronk was, in fact, as manager before May 1, 2001, prior to assuming the title.

The Delegate’s analysis--brief as it is--is that Mr. Bronk’s duties at the material times did not include “hire, fire, schedule, discipline, purchase etc.” These factors, considered by the Delegate, are relevant to the inquiry. He did not accept that Mr. Bronk was a manager for the purposes of the *Act*. He based that decision on, among others, interviews with witnesses.

While the definition of “Manager” has been broadened somewhat, at the material time, “Manager” was defined in the *Employment Standards Regulation*, section 1, as follows:

“Manager” means

- (a) a person whose *primary* employment duties consist of supervising and directing other employees, or
- (b) a person employed in an executive capacity; (emphasis added)

There is no suggestion that Mr. Bronk was employed in an executive capacity. Whether the Employer succeeds, therefore, depends on whether he can persuade me that Mr. Bronk's "primary employment duties" related to supervision and direction of other employees.

I have carefully considered the Employer's submissions. The Employer says that Mr. Bronk did, indeed, have managerial powers. The Appeal includes the following:

- "Personal [sic.] was hired and fired on Mr. Bronks approval."
- "He ordered all shop supplies through office personal [sic]."
- "He did a lot of maintenance around the shop ... these hours spent maintaining and organizing the shop was to make his job run more smoothly...."
- "... a lot of his time was spent maintaining equipment that the sales manager was paid for."

While I am prepared to accept that Mr. Bronk may have had certain managerial duties, I am not persuaded, on the evidence before me that he was a manager for the purposes of the *Act* prior to May 1, 2001. I am not persuaded that his "*primary* employment duties" were managerial.

In short, the appeal is dismissed.

## **ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated November 21, 2002, be confirmed.

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**Ib S. Petersen**  
**Adjudicator**  
**Employment Standards Tribunal**