

An appeal

- by -

Laura Forsythe of 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

TRIBUNAL MEMBER: Carol L. Roberts

FILE No.: 2004A/27

DATE OF DECISION: March 23, 2004

DECISION

SUBMISSIONS

Rhona Beck

On behalf of the Director of Employment Standards

OVERVIEW

Laura Forsythe appealed a Determination of the Director of Employment Standards ("the Director") issued October 22, 2003, pursuant to Section 112 of the *Employment Standards Act* ("the Act"),

Seven former employees of Clancey's Family Restaurant Ltd. ("Clancey's") had 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.

Clancey's ceased operation in August, 2003. The delegate concluded that Ms. Forsythe was a director or officer of Clancey's, and found her personally liable for two month's unpaid wages for each employee. Ms. Forsythe contended that the delegate erred in law in finding that she was a director.

In a decision issued February 3, 2004, I concluded that the delegate had not erred in finding that Ms. Forsythe was personally liable for unpaid wages. I referred the issue of quantum back to the delegate in light of the evidence that some employees had been paid. (BC EST #D021/04)

In a referral back report dated February 24, 2004, the delegate confirmed that one employee, Jeannette Hamel, had been paid in full, and that two others, Trista Taylor and Christy Cartmell had received a portion of their wages. The quantum determined owing to the employees was determined to be \$3,725.24. Together with the \$1,000 penalty, the total liability was determined to be \$4,725.24.

ISSUE TO BE DECIDED

Whether the Director correctly determined the amounts owed to the employees.

FACTS

The background facts were set out in my previous decision and will not be repeated here.

The delegate reviewed the original time cards provided by Ms. Gallagher, a fellow director. Jeannette Hamel confirmed she had been paid in full.

The delegate determined that the remaining six employees were entitled to wages in the total amount of \$3,725.24.

Ms. Forsythe did not respond to the delegate's referral back report.

ORDER

I Order, pursuant to Section 115 of the Act, that the Determination dated October 22, 2003 be varied to show total liability is \$4725.24.

Carol L. Roberts
Member
Employment Standards Tribunal