

An appeal

- by -

Corey MacKinnon

- 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.: 2007A/74

DATE OF DECISION: August 14, 2007

DECISION

SUBMISSIONS

Kathleen Demic

on behalf of the Director of Employment Standards

OVERVIEW

1. On March 5, 2007, a delegate of the Director of Employment Standards issued a Determination finding that Corey MacKinnon had received his full entitlement to wages under the *Act*.
2. Mr. MacKinnon appealed that Determination, arguing that the delegate had failed to observe the principles of natural justice in making the Determination and that the Determination was based on false and contradictory conclusions.
3. In a decision issued June 12, 2007 (BC EST #D051/07), I referred the matter back to the delegate for an analysis of whether Mr. MacKinnon was indeed a manager and therefore not entitled to premium overtime wages. I was unable to determine from the record how the delegate arrived at her conclusion on the issue of whether Mr. MacKinnon was a manager, saying only that the parties agreed that he was. I noted that, in his complaint form, Mr. MacKinnon had specified that his job was a “chef”.
4. On the referral back, the delegate says that the evidence of both parties with respect to Mr. MacKinnon’s duties and responsibilities was consistent, and that his duties and responsibilities were consistent with those of a manager as defined by the *Employment Standards Regulation*.
5. The delegate says that she no longer has contact with Mr. MacKinnon, and that the employer was not interested in adding any further information. She says that the information she gathered during her investigation disclosed that Mr. MacKinnon had full authority and discretion to manage the kitchen, including responsibility for staffing and managing the employees. He was also responsible for making decisions about expenditures involving supplies, monitoring inventory, setting the daily menu and deciding on the daily specials, and setting prices.
6. The delegate submits that she correctly found Mr. MacKinnon to be a manager and that he was entitled to be paid for the hours he worked and not to any overtime premiums. The delegate sought confirmation of the Determination.
7. Neither Mr. MacKinnon nor the employer made submissions on the delegate’s letter.

DECISION

8. I am satisfied with the delegate’s analysis. The apparent undisputed evidence was that Mr. MacKinnon’s employment duties and responsibilities were such that he fell within the definition of “manager” as contained in the *Regulation*. Given this conclusion, I find no error in the delegate’s calculations of Mr. MacKinnon’s wages.

ORDER

- ⁹. I Order, pursuant to Section 115 of the Act, that the Determination, dated March 7, 2007, be confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal