

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 -

Trish Helene McKeen
(the "McKeen")

Of a Determination issued by

THE DIRECTOR OF EMPLOYMENT STANDARDS
(the "Director")

ADJUDICATOR: Jerry W. Brown

DATE OF DECISION: May 1, 1996

FILE NO: 96/113

DECISION

APPEARANCES

Trish Helene McKeen	Appellant
Bruce Cowie	For ASL
David Ages	For the Director of Employment Standards

OVERVIEW

This is an appeal brought by Trish Helene McKeen ("McKeen"), pursuant to Section 112 of the *Employment Standards Act* (the "Act"), from Determination #CDET000822 issued by the Director of Employment Standards (the "Director") on January 19, 1996. The Director determined that ASL Analytical Service Laboratories Ltd. ("ASL"), the employer, did not contravene the *Act* as set out in the Complaint filed by McKeen. McKeen claims ASL owes her overtime pay for work during the period of February 1995 to September 15, 1995.

FACTS

The following facts are not in dispute: McKeen was employed as a chemist at ASL and started working for ASL in November of 1987. Her last day of work was in September 1995. McKeen assumed the duties of her supervisor in February 1995 and worked in that position until some time in May when her supervisor returned and resumed his duties.

ASL had a system of claiming and collecting overtime both in the form of monies or time off. McKeen was fully aware of the overtime policy and in fact had conformed to the requirements of claiming and receiving overtime prior to her temporary promotion to supervisor. As supervisor, McKeen was responsible for and implemented the overtime system for her department and herself. This system included reporting the actual hours worked to the supervisor for approval on a semi-monthly basis or when eight hours were accumulated. The supervisor would then forward a copy to accounting. During her period as supervisor, McKeen acknowledges that she implemented the system for other employees but that she did not follow the regular procedures for herself.

McKeen's evidence was that after she was relieved of her supervisor responsibility she continued to ignore the regular overtime procedures. ASL did not produce any overtime records for

McKeen for that period. McKeen never submitted any records for the period in question. ASL pays overtime to other employees according to the implemented program.

ISSUES TO BE DECIDED

1. Was overtime owed to McKeen; and
2. If overtime was owed, how much overtime money was owed.

ARGUMENTS

McKeen argues that overtime was owed for hours she worked during the period in question. She claims that her summary of overtime hours she worked contained in her monthly summary of her daily journal should be accepted as proof of this overtime worked, because ASL has not produced any records nor kept any records of McKeen's alleged overtime. McKeen also argues that she kept her overtime sheets in a folder in her office, but that the folder has disappeared.

ASL argues that there is a system in place for claiming and receiving overtime. The system is known to all employees and that there has never been a dispute about paying overtime when the system is followed. ASL argues that McKeen was aware of the system, had complied with the system and received overtime based on compliance with the system prior to her supervisor tour of duty. ASL says that no overtime is owed because McKeen never filed overtime claims for that period in question. ASL also argues that it should not be penalized for McKeen's failure to provide records of any overtime she allegedly worked.

ANALYSIS

The Director's delegate was helpful in providing his reasons for the determination. Based on McKeen's evidence at the hearing, it is clear that ASL had a long standing policy in place for handling overtime claims by employees, including McKeen. It is clear that McKeen was fully aware of the system. In fact, she was responsible for implementing these procedures during her tenure as a supervisor for the three-month period. McKeen argues that ASL failed to keep adequate records and did not produce records supporting its claim that there was no overtime worked. McKeen's evidence indicates that this was a result of her not following procedures of which she was fully aware and in fact responsible for implementing. Based on her evidence that she failed to comply with the system, I am not satisfied that it is appropriate to find ASL in contravention of the *Act*.

McKeen also gave evidence that she worked extra hours in other departments and was told by different people that she would be receiving overtime compensation, either in time off or in monies, by those superiors. No one else was called in support of these statements.

I do not accept that ASL, which has a formal system of accounting for overtime in place and which McKeen acknowledges routinely paid that overtime compensation, would in one particular case, that being McKeen, refuse to pay overtime for a specific period of time.

It is not necessary for me to deal with issue 2.

Neither McKeen's evidence or testimony has persuaded me that the Director's delegate was incorrect in his determination.

ORDER

In summary, I order under Section 115 of the *Act*, that Determination #CDET000822 be confirmed.

“*Jerry Brown*”
Jerry W. Brown
Adjudicator
Employment Standards Tribunal

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