

An appeal

- by -

Small Town Press Ltd. operating as The Similkameen Spotlight

- 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:** John M. Orr

**FILE No.:** 2003A/18

**DATE OF DECISION:** March 18, 2003

## DECISION

### OVERVIEW

This is an appeal by Small Town Press Ltd. (“Small Town Press” or “the employer”) pursuant to Section 112 of the Employment Standards Act (the “Act”) from a Determination dated December 11, 2002 by the Director of Employment Standards (the “Director”).

In the exercise of its authority under section 107 of the Act the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

The Director determined that Small Town Press employed Katherine Wills (“Wills”) as a reporter/ editor of a local newspaper. When the employment ended Wills made a number of claims to the Director. Some of the issues were resolved but there remained an issue of unpaid wages for overtime. The Director determined that Small Town Press owed Wills \$4,461.38 in unpaid overtime.

Small Town Press has filed an extensive appeal alleging bias by the Director’s delegate and many factual issues that are disputed. Wills has filed a reply in detail to the various allegations. The Director alleges that most of the facts alleged in the appeal are “new evidence” that should not be admitted on the appeal because they were not previously raised with the delegate.

### FACTS AND ANALYSIS

In this case I do not intend to address the multitude of factual issues that have been alleged by both the employer and the employee because I have concluded that this matter must be referred back to the director on one issue.

Before addressing that one issue I should state that I am not satisfied that the employer has any reasonable grounds upon which to allege bias on the part of the director’s delegate. It is very clear that the delegate gave both parties a full and fair opportunity to deal with the issues prior to issuing the determination. The employer’s allegations of bias are unfounded.

The foundation for the claim and the determination is that Wills worked overtime that was not paid by the employer. However, the delegate noted that the employer had a policy that overtime could not be worked without prior approval. The delegate notes, in setting out the complainant’s position, that she claims that she was unaware of the policy. Nevertheless the delegate did not make any finding of fact on this issue.

The Tribunal has held that an employee cannot create a liability for the employer to pay overtime by working hours that are not authorised or knowingly acquiesced in by the employer, *Re: Schutt (cob Abco Building Maintenance)* BCEST #D287/97; applied in *Abco Building Maintenance Ltd.* BCEST #D454/02; see also *Re: McKeen* BCEST #D082/96 and *Re: Egerdeen* BCEST #D080/99. It appears that Wills did not submit a claim for overtime until her employment was terminated so it appears that this overtime was not pre-approved or knowingly acquiesced in by the employer. An employee cannot unilaterally choose to work overtime and then at some date subsequent to termination make a claim for payment of overtime not authorised or approved by the employer. An employer has the inherent right to

manage its workforce and to control the hours worked by employees. If overtime is authorised or knowingly acquiesced in by the employer then the legislation requires payment for that overtime but there is no obligation for an employer to pay overtime that is not authorised.

The delegate did not address this fundamental issue in the analysis portion of the determination. I have concluded therefore that this matter must be referred back to the director to fully investigate and determine this issue.

## **ORDER**

I order, under section 115 of the *Act*, that this matter is referred back the Director.

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**John M. Orr**  
**Adjudicator**  
**Employment Standards Tribunal**