

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act

- by -

Sheldon C. Palidwor
("Palidwor")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR:	Barry Goff
FILE No:	96/553
DATE OF DECISION:	February 27, 1997

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the "Act") against Determination No. CDET 003817 issued by a delegate of the Director of Employment Standards on August 27, 1996. The Delegate determined that Marsuba Holdings Ltd. operating as Time Out Pub & Grill ("Marsuba") had not contravened Section 18(a) of the *Employment Standards Act*. Palidwor appealed the Determination on September 15, 1996. He argues that wages are owing by Marsuba for vacation, overtime and compensation for length of service.

I have completed my review of the material on file including the information provided by the Director and conclude that the determination should be confirmed.

ISSUE TO BE DECIDED

The issue to be decided is whether Marsuba owes any additional wages to Palidwor.

FACTS

Palidwor was employed by Marsuba as a Manager from June 23, 1995 until October 22, 1995. In addition he had a 5% interest in Marsuba. Prior to working for Marsuba Palidwor was employed by the Wild Pony Cabaret Incorporated. The Reason Schedule attached to the Determination found Marsuba and Wild Pony to be separate legal entities.

Palidwor argued that he is entitled to overtime pay but agrees that he was a Manager for Marsuba. Palidwor also argued that he is entitled to vacation pay in the amount of 6% and compensation for length of service because he had worked for the employer at another establishment since 1986.

ANALYSIS

The Reason Schedule attached to the Determination indicates that there is no dispute that the Complainant was employed in the capacity of a Manager. Section 34(f) of the *Employment Standards Act* regulation exempts Managers from the hours of work and overtime provisions of the Act.

At the time of this Determination Palidwor had been employed by Marsuba for four months. Under Section 42 of the former *Employment Standards Act*, an employee was entitled to notice of termination or wages in lieu after completing six months of employment. Palidwor received 4% vacation pay and was terminated without notice. There is no evidence to support the Complainant's argument that Marsuba is either under common control or direction with or the successor to his previous employer, Wild Pony. In the absence of such determination Palidwor is not entitled to compensation for length of service because he has not completed six months

employment with Marsuba nor is he entitled to 6% vacation pay because he has not been employed for more than five consecutive years with Marsuba.

The onus is on the Appellant to provide evidence and argument in support of his position that the Determination should be varied. In this case, the Director's delegate conducted a thorough investigation and provided a clear and detailed recitation of her reasons for reaching this determination. The reasons were provided to Palidwor along with the appeal form which he filled out. The appeal form clearly states in Section C that the appellant must provide reasons for the appeal. In response to this Palidwor writes:

"I was never questioned in length about this claim by Mrs. Shivji so the Board only has Mr. Wosk's word. The verdict should be overturned and I should receive termination, vacation, legal and interest owing waiting to hear when you want my statement."

Shortly after filing this complaint Palidwor engaged the services of a lawyer. The Director's delegate was informed that she was to conduct all business concerning this case with counsel, not Palidwor which is of course, the normal practise and procedure. I find it very unlikely that Palidwor was unaware that this is normal practise and procedure. Even if Palidwor had not known, the reasons provided in the Determination clearly set out the facts upon which the Director's delegate relied and the appeal form requires the appellant to make a complete submission. There is no basis for Palidwor to suggest that he has not been interviewed or informed of the progress and determination of his complaint.

ORDER

I order pursuant to Section 115 of the Act that Determination No. CDET 003817 be confirmed.

Barry Goff
Adjudicator
Employment Standards Tribunal