

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

- by -

Trev-Cher Enterprises (1992) Ltd.  
operating Fynnigan's Pub  
(“ Fynnigan's ”)

- of a Determination issued by -

The Director Of Employment Standards  
(the “Director”)

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 96/190

**DATE OF DECISION:** May 22, 1996

## DECISION

### OVERVIEW

This is an appeal by Fynnigan's pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against Determination No. CDET 001550 issued by the Director of Employment Standards ("Director") on March 12, 1996. In this appeal Fynnigan's claims that Toni Moore ("Moore") was a manager and not entitled to overtime wages.

I have completed my review of the written submissions made by Fynnigan's and the information provided by the Director.

### FACTS

Moore was employed by Fynnigan's from July 23, 1991 to December 5, 1995 at which time she quit.

Moore filed a complaint with the Employment Standards Branch ("Branch") on December 6, 1995.

The Director investigated Moore's complaint and, subsequently, determination # CDET 001550 was issued.

### ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Moore was a "manager" as defined in the *Act* and therefore not entitled to overtime wages.

### ARGUMENTS

Fynnigan's argues that:

- Moore held the title of manager;
- Moore has the responsibilities of a bar manager;
- Moore was given a \$1.00 per hour raise for performing managerial duties;
- Moore had keys to the establishment.

The Director contends that:

- Moore was employed as a waitress;
- interviews with ex-employees who had been co-workers of Moore indicates that Moore was not recognized as a manager and that the duties she performed were also performed by other employees;
- the duties performed by Moore do not place Moore in the category of "manager" as defined by the *Act*;

- After a previous complaint by another employee resulted in a Branch audit Moore was requested to sign a document stating that she was a manager, she refused and subsequently quit.

## ANALYSIS

The determination of whether an employee is a “manager” or not must be considered in light of the definition of “manager” found in the Employment Standards Regulation (“Regulation”). Section 1 of the Regulation defines manager as:

“manager means

- a) a person whose primary employment duties consist of supervising and directing other employees, or
- b) a person employed in an executive capacity;”

The list of duties supplied by Fynnigan’s as demonstrating Moore’s role as a manager is disputed by Moore, the ex-employees interviewed and the former manager. The former manager also disputed that Moore received the \$1.00 per hour raise for performing manager’s duties; she stated that Moore and another employee asked for a raise and after discussing it with the owner, the raise was granted to both. I find that the information provided by the Director with respect to Moore’s duties is preferable to that of Fynnigan’s.

There was no evidence provided to show that Moore’s primary employment duties consisted of the supervision and direction of other employees, she merely assisted new employees to “learn the ropes”.

The other duties alleged to have been the responsibility of Moore would not, in any event, be considered to be those of a person employed in an executive capacity.

For the reasons above, I conclude that Moore was not a manager as defined in the *Act*. Moore is therefore entitled to be paid overtime wages for the overtime hours worked.

I am satisfied that the calculations as performed by the Director and set forth in the Determination are correct.

## ORDER

Pursuant to Section 115 of *Act*, I order that Determination No. CDET 001550 be confirmed in the amount of \$2026.20 .

---

**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**

May 22, 1996

---

**Date**

:jel