

An appeal

- by -

Orton Holdings Ltd. operating Cruise-in-Café,
Marjorie Louise Sansom, a Director or Officer of Orton Holdings Ltd., and by
Allan Wayne Miller, a Director or Officer of Orton Holdings Ltd.

(collectively, "Orton")

- 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: David B. Stevenson

FILE No.: 200/862, 2001/2 & 2001/3

DATE OF DECISION: March 14, 2001



DECISION

OVERVIEW

This decision addresses three appeals pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Orton Holdings Ltd. operating Cruise-in-Cafe’, Allan Wayne Miller, a Director or Officer of Orton Holdings Ltd. and Marjorie Louise Samson, a Director or Officer of Orton Holdings Ltd. (collectively, “Orton”) of three Determinations, one corporate Determination and two director/officer Determinations of the Director of Employment Standards (the “Director”) dated November 23, 2000. The corporate Determination concluded that Orton Holdings Ltd. had contravened Part 4, Section 40 and Part 5, Section 46 of the *Act* in respect of the employment of Jessie Littlechild (“Littlechild”) and ordered Orton Holdings Ltd. to cease contravening and to comply with the *Act* and to pay an amount of \$451.29. The director/officer Determinations found that Allan Wayne Miller and Marjorie Louise Samson were directors or officers of Orton Holdings Ltd. and, under Section 96 of the *Act*, ordered Allan Wayne Miller and Marjorie Louise Samson to comply with their statutory obligation to pay the amount required under Section 96 of the *Act*.

The appeals challenge the conclusion in the corporate determination that Littlechild was owed any overtime wages or statutory holiday pay. The appeals do not challenge the conclusion that Allan Wayne Miller and Marjorie Louise Samson were directors or officers of Orton Holdings Ltd. for the purposes of Section 96 of the *Act*. It follows that the appeals on the director/officer Determinations will be determined by the result in the appeal of the corporate Determination.

ISSUE

The sole issue in this appeal is whether Orton has demonstrated the Director was wrong to have concluded there was any overtime wages or statutory holiday pay owing to Littlechild.

FACTS

The Determination sets out the following findings of fact:

The records provided by the employer show that the complainant worked overtime hours and did not receive overtime wages for doing so. The records also show that the complainant worked on a Statutory Holiday and was not properly compensated for doing so. Further, the employer seems to be of the view that an entitlement to overtime wages begins after forty hours in a week and not on a daily basis (ie. After 8 hours work in a day).



The records provided by the employer show the hours worked by the complainant and the wages paid to the complainant. The records show that the complainant was compensated at a straight-time rate for the overtime hours worked on a daily basis, rather than being compensated at one and one half times his regular wage for hours worked in excess of eight in a day.

ARGUMENT AND ANALYSIS

In the appeals, Orton does not address the above findings of fact, except in general terms, asserting only that overtime was paid for hours over forty in a week and the complainant was paid for the statutory holidays in question, April 24, 2000 and July 1, 2000. The appeal contends there are “many errors” in the Determination. None of these alleged errors are apparent from the material in the file. There is a responsibility on Orton in this appeal to identify the relevant errors in the Determination show they have materially influenced the Director to a wrong result. Orton has not met that responsibility. In fact, the conclusions made in the Determination appear to have been well supported by the records provided to the investigating officer by Orton.

A considerable amount of the appeal submission addresses points that are irrelevant to the validity of the Determination, although I am quite certain they express legitimate real life concerns held by Orton about the complainant and his attitude toward his employment at the Café’. They do not, however, provide any basis upon which I can justify interfering with the Determinations.

This appeals are dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the corporate Determination dated November 23, 2000 be confirmed in the amount of \$451.29, together with any interest that has accrued pursuant to Section 88 of the *Act* and the director/officer Determinations dated November 23, 2000 be confirmed.

DAVID B. STEVENSON

David B. Stevenson
Adjudicator
Employment Standards Tribunal