

**BC EST #D127/96**

**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 -

John Papadimitriou  
("Papadimitriou")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** C. L. Roberts

**FILE NO.:** 96/215

**DATE OF DECISION:** May 28, 1996

**DECISION**

**APPEARANCES**

John Papadimitriou	On behalf of himself
Dimitri Mavrikos	For D.J.M. Holdings Ltd.

**OVERVIEW**

This is an appeal by John Papadimitriou ("Papadimitriou") and D.J.M. Holdings Ltd. ("D.J.M."), pursuant to Section 112 of the *Employment Standards Act* ("the *Act*"), against a Determination of the Director of Employment Standards ("the Director") issued on March 19, 1996 (Determination No. 001636). The Director found that the employer had not contravened Section 8 of the *Employment Standards Act*, and did not owe any further wages, but determined that Sections 18(3), 58(3) and 63(1) of the *Act* were violated when the DJM failed to pay severance and vacation pay and compensation for length of service upon termination of employment. The Director ordered that D.J.M. pay \$376.06 to the Director of Employment Standards.

**ISSUE TO BE DECIDED**

There are two issues on appeal:

- 1) Whether Papadimitriou was entitled to bonus pay and overtime wages. The Employee contends that he was he was a manager, and worked extra hours performing duties for which he was not compensated, in violation of the agreement between them.
- 2) Whether the Director correctly determined that D.J.M. had not established just cause for terminating Papadimitriou. The Employer contends that the employee was properly terminated for cause, and that no severance pay is owing.

**FACTS**

John Papadimitriou ("Papadimitriou") was employed with D.J.M. from June 12, 1995 to November 22, 1995. Initially hired as a manager for the Broadmead location, on July 2, 1995, he was moved to the downtown location where he worked as the night manager/supervisor. There was a dispute over the wages offered to Papadimitriou. He alleged that the company offered him

\$2500 per month. DJM says they offered Papadimitriou \$1500 per month to start, with an increase if he proved suitable for the job.

Employer records show that the Employee was paid \$1500 per month from July 1 until the end of the employment period.

The Director found no evidence to support Papdimitriou's claim, and found no wages owing.

The Director also found that as Papadimitriou had authority to hire and fire, schedule and direct employees, he was a manager as defined in the Regulations. As a manager, the Director found that DJM did not owe him overtime wages, since he was excluded from the provisions of Section 40 of the *Act*.

Finally, the Director determined that Papadimitriou's employment was ended without 'just cause', as no warnings were given prior to terminating his employment, and ordered payment of compensation.

Several other issues raised in the initial complaint were settled between the parties and are not the subject of this appeal.

## **ANALYSIS**

This appeal was by way of written submissions by both Mr. Papadimitriou and Dimitri Mavrikos on behalf of D.J.M.

I have reviewed the documents provided by Mr. Papadimitriou upon filing the appeal, the documents submitted to the Director by the parties, the determination of the Director, and the letters of appeal by both parties in arriving at my decision.

On the basis of the evidence presented, I confirm the decision of the Director that the employee is not entitled to overtime wages.

I also confirm the determination of the Director that the Employee was properly terminated and not entitled to compensation for service.

I shall deal with each issue separately.

### Overtime wages

Papadimitriou contends that he is entitled to overtime wages and bonus pay.

Although the Employee does not dispute the Director's finding that he was a manager, he nevertheless contends that he was not adequately compensated. He alleges that the Employer falsified employment records in order to avoid paying the bonus he was promised.

As there is no dispute to the findings of the Director with respect to Papadimitriou's employment status, I am unable to conclude that the Director's determination is incorrect. Managers are not entitled to overtime pay by virtue of Section 32 of the Employment Standards Regulations, and I deny the appeal in this respect.

The Employee submitted no evidence to support his allegation that the DJM falsified employment records, nor his contention that the Employer promised to pay him extra wages as a bonus.

I am satisfied that the Director examined the documents in the Employer's possession, and found no evidence to support this argument. The Record of Employment and the T4, which were included with the decision, indicate that the employee was paid a monthly salary of \$1500.00 for 4 1/2 months. Papadimitriou presented no evidence to support his allegation that this documentation was untrue, nor that there was an agreement to pay him a bonus at some later date.

I deny the appeal in this respect.

#### Severance pay

Section 63 of the *Act* provides that the Employer is liable to compensate the Employee for an amount equal to two weeks wages as compensation for length of service unless, among other things, the Employee is dismissed for just cause.

The Employer contends that he had sufficient grounds on which to terminate Papadimitriou's employment, including a complaint of sexual harassment against him, and the unexplained absence of a large sum of money, which the police investigated, but in respect of which no charges were laid.

Mr. Mavrikos contends that on November 14, 1995, several staff sought a meeting with him regarding the employee's behaviour. The meeting was arranged for November 20, the first opportunity to meet without the employee present. At the meeting, several staff threatened to quit if Papadimitriou was kept on as an employee. Mr. Mavrikos states that in light of the severity of the allegations, and the fact that a sexual harassment complaint had been filed with the B.C. Council of Human Rights on or about September 1 against Papadimitriou, he had no choice but to terminate his employment. Mr. Mavrikos further argued that the dismissal was not connected with the missing money of November 16, 1995, although the employee's inability to provide satisfactory answers to the missing money provided further grounds for the dismissal. Mr. Mavrikos alleges that the complaints from staff provided him with sufficient justification for immediate dismissal, and that written or verbal disciplinary action was not required.

The Director found that the Employer had not established that enough warnings were given to the employee to substantiate "just cause" for termination.

The onus is on the Employer at first instance to establish just cause. Just cause includes criminal acts, gross incompetence or a significant breach of workplace policies. It also includes minor infractions of workplace rules, or unsatisfactory conduct where the conduct is repeated despite clear warnings to the contrary and progressive disciplinary measures.

On the evidence presented, I am satisfied that the employer was required to provide written warnings to the employee. Although a complaint to the B.C. Council of Human Rights had been filed, it was several months prior to the dismissal. I recognize that the allegations place the employer in a difficult position with respect to his obligations to other employees, however the evidence does not disclose that any punishment or warnings were issued to Papadimitriou at that time.

I accept that the employer investigated the complaints with the staff, and determined, to his satisfaction, that Papadimitriou had violated workplace policies. I also accept that he suspected Papadimitriou of conduct, which if proven, would have led to criminal charges being laid. However, the evidence is that those incidents were investigated by the police and no charges were laid. The Employee was not reprimanded for his conduct prior to the dismissal, warned that his conduct was inappropriate, or offered the opportunity to correct it.

I am satisfied that progressive disciplinary measures were required and not taken. There was an opportunity, and indeed a duty on the Employer to warn the Employee about his conduct after the filing of the complaint to the B.C. Council on Human Rights in September. There was no evidence this was done. The fact that there were a number of disgruntled employees complaining about Papadimitriou does not, without previous warnings, constitute grounds for termination.

Accordingly, I am unable to find that the determination by the Director was incorrect, and dismiss the appeal.

**ORDER**

I Order, pursuant to Section 115 of the *Act*, that Determination #001636 be confirmed.

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**Carol Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**

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