

**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 -

Northway Restaurant Ltd.  
(“Northway”)

- of a Determination issued by -

The Director Of Employment Standards  
(the “Director”)

**ADJUDICATOR:** Norma Edelman

**FILE NO.:** 97/082

**DATE OF DECISION:** March 20, 1997

## DECISION

### OVERVIEW

This is an appeal by Northway Restaurant Ltd. (“Northway”) under Section 112 of the *Employment Standards Act* (the “*Act*”) against a Determination No. CDET 005182 issued by the Director of Employment Standards (the “Director”) on January 15, 1997. The Determination found that Northway owed overtime wages and interest to Greg Penny (“Penny”). Northway’s appeal challenges that conclusion.

### ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Penny is owed wages by Northway in the amount calculated by the Director.

### FACTS

Penny was employed by Northway as a cook from May 15, 1996 to October 28, 1996. There is no dispute that Penny worked overtime hours and was only paid straight time rates of pay. Consequently, the Director found that Penny was owed overtime wages. Northway’s arguments that Penny agreed to work at straight time rates of pay, and that it should be able to offset wages due to alleged damages caused by Penny, were rejected by the Director pursuant to Sections 4 and 21(1) of the *Act*.

Northway’s appeal gives the following reasons for challenging the Determination:

*An agreement to work straight time for any hours over 40/wk because of seasonal nature of work. Employee had option to work less hrs (see July) at his discretion with no pressure from employer. Damages and expenses incurred by employee during employment.*

### ANALYSIS

Section 4 of the *Act* states that any agreement to waive the minimum requirements under the *Act* has no effect. Accordingly, any agreement that existed between Penny and Northway regarding the non-payment of overtime rates of pay is null and void and is not relevant to the appeal.

Section 21 (1) of the *Act* prohibits an employer from withholding wages from an employee for any reason, except where there is explicit statutory authority to do so. Section 21 (2) of the *Act* states that an employer must not require an employee to pay

any of the employer's business costs, except as permitted by regulation. None of the exceptions are relevant to this case. Thus, Northway is not entitled to make any deductions from Penny's wages for alleged damages and expenses incurred by him during his period of employment.

For the above reasons, I find no grounds to cancel or vary this Determination. Penny worked overtime hours and he is entitled to be paid overtime rates of pay.

**ORDER**

Pursuant to Section 115 of the *Act* I order that Determination No. CDET 005182 be confirmed.

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**Norma Edelman**  
**Registrar**  
**Employment Standards Tribunal**