

An appeal

- by -

Kanaf Security Group Inc.  
("Kanaf Security" or the "Employer")

- 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:** Ib S. Petersen

**FILE No.:** 2000/783

**DATE OF HEARING:** February 19, 2001

**DATE OF DECISION:** March 22, 2001

## DECISION

### APPEARANCES:

|  |                           |
|--|---------------------------|
| Mr. Ivan Saretzky<br>Mr. Dan Shmilovitch | on behalf of the Employer |
| Mr. Ali Khan                             | on behalf of himself      |

### OVERVIEW

This case arises out of an appeal of a Determination, dated October 26, 2000. The Determination found that Mr. Khan (“Khan”) had been terminated without just cause. The basis for the termination was that Khan on an occasion made improper comments about Hari Nandan, a field operations manager of the business, and Khan’s immediate supervisor. Khan had “bad mouthed” Nandan in front of an employee and another manager. The Determination found that Khan was entitled to 3 weeks’ compensation for length of services, based on his employment as an area manager from April 2, 1996 until May 11, 1999. The Determination also found that Khan was not a manager and was, therefore, entitled to overtime wages. Based on his remuneration, which was \$10.00 per hour, the delegate found that he was entitled to a total of \$11,088.71.

### ISSUES

The Employer appeals the Determination. Briefly put, the Employer says that it was entitled to terminate Khan because of the comments he had made. The Employer also reiterates its position that Khan was a manager. In a nutshell, those are the issues before me.

### FACTS AND ANALYSIS

#### 1. Termination of Khan

I am of the view that the Employer did not have just cause for the termination of Khan even if he, in fact, had done what the Employer accuses him of. When an employer terminates an employee, the employee is entitled to notice or pay in lieu to a maximum of 8 weeks (see Section 63 of the *Act*). However, an employee is not entitled to notice or pay in lieu if, among others, the employee is dismissed for “just cause” (Section 63(3)(c)). The principles consistently applied by the Tribunal have been summarized as follows (*Kruger*, BCEST #D003/97):

- “1. The burden of proving the conduct of the employee justifies dismissal is on the employer.

2. Most employment offenses are minor instances of misconduct by the employee not sufficient on their own to justify dismissal. Where the employer seeks to rely on what are instances of minor misconduct, it must show:
  1. A reasonable standard of performance was established and communicated to the employee;
  2. The employee was given a sufficient period of time to meet the required standard of performance and demonstrated they were unwilling to do so;
  3. The employee was adequately notified their employment was in jeopardy by a continuing failure to meet the standard; and
  4. The employee continued to be unwilling to meet the standard.
3. Where the dismissal is related to the inability of the employee to meet the requirements of the job, and not to any misconduct, the tribunal will also look at the efforts made by the employer to train and instruct the employee and whether the employer has considered other options, such as transferring the employee to another available position within the capabilities of the employee.
4. In exceptional circumstances, a single act of misconduct by an employee may be sufficiently serious to justify summary dismissal without the requirement of a warning. The tribunal has been guided by the common law on the question of whether the established facts justify such a dismissal.”

In this case, the burden is on the Employer, as the appellant, to persuade me that the Determination should be set aside.

The Employer, as well, has the burden to prove just cause for the termination. As mentioned, I am not satisfied that the Employer has discharged either burden.

Turning to the issue of the comment alleged to have been made by Khan, on May 9 1999--which he did deny making--I am of the view that it does not provide just cause for termination. The material facts with respect to the termination are relatively straightforward, though in dispute between the parties.

According to the Employer's evidence, on May 10, 1999, Khan was overheard--by Jason House, an area manager, who testified at the hearing for the Employer--questioning the competence of Nandan and say to an employee, Yassin Sheikh-Ali: "he will make problems for himself as well as other area managers" and "he can't make a decision--if he needs to use the rest room he would call his boss for permission." House reported the comments to Nandan and Shmilovitch. The following day, May 11, a meeting was held. Present were Khan, Shmilovitch, Saretzsky and Dan Saretzsky. The minutes taken of the meeting were tendered into evidence--they had been, as well, presented to the delegate. According to the Employer's evidence, Khan was first asked about his conversation with Yassin Sheikh-Ali, the security guard and did not volunteer that he had "badmouthed" Nandan. Khan said that he talked to Yassin Sheikh-Ali about schedules only. He was then confronted with the comments he was alleged to have made against Nandan, the field operations manager, that he was "unable to make a decision," that he would "need permission to go to the bathroom," that he was "hiding out in the office on Sunday (sic.)," and that he was "scared of his own job." From the minutes, it appears that Khan was told that the comments were undermining Nandan in front of an employee and was destructive to the Employer. Khan was required to correct the statements. According to the minutes, Khan refused to apologize to Nandan for the comments.

Khan says that he never made the comments attributed to him to Yassin Sheikh-Ali. The latter testified via telephone conference and stated that Khan "made no derogatory statement." There is an obvious contradiction in the evidence of Khan and Yassin Sheikh-Ali, on the one side, and Jason House on the other. As well, Shmilovitch and Saretzsky testified that Khan did not deny making the statements at the May 11 meeting. On balance, I prefer the Employer's evidence of the statements. I find House's testimony believable and credible. His comments were committed to paper shortly after the events in question. The delegate did not interview Yassin Sheikh-Ali until almost a year after the incident. The minutes of the May 11 meeting refer to Khan's comments in some detail. In the context, there was no dispute that Khan was a well regarded employee within the company, and that the Employer had offered him and Nandan the field operations manager position jointly. Khan's opinion that the Employer sought to "get rid of him because he was the first in the company to turn down a promotion" does not seem credible to me. On the evidence before me, I find it difficult to accept that the Employer fabricated the evidence against Khan, particularly the minutes of the meeting, as is implied in the delegate's submission and, indeed, in the Determination.

The Determination states, under "findings of fact":

"I do not place a lot of weight on the minutes of the meeting held between the management and Khan on May 11, 1999 simply because there was no unbiased witness there. Rather I rely on the evidence given by the guard, Yassin Sheikh-Ali. He was a current employee of Kanaf and had no interest in siding with Khan; therefore I believe his evidence is unbiased.

Yassin Sheikh-Ali's evidence is contrary to House's version. Therefore there are doubts that Khan made the all the bad comments about his superior. It then follows that Khan cannot be dismissed for refusing to retract his comments or to apologize."

Later, under "analysis," the delegate notes:

"Since the onus to prove just cause is on the employer, but the evidence from Yassin Sheikh-Ali does not corroborate Kanaf's position, I find that there is no just cause for the termination of Khan and he is entitled to 3 weeks' regular wages for compensation."

I agree with the delegate that the onus is on the Employer. I also agree that the delegate is entitled to consider that the evidence of Yassin Sheikh-Ali, for the reasons stated, is more credible than that the evidence provided by the Employer. However, the delegate's submission--among others in response to a claim by the Employer that she was biased, or approached the evidence in biased manner--to the Tribunal sheds light on the reasoning behind the Determination:

"There are two main pieces of evidence that Kanaf used to support termination for just cause. One is the minutes of the meeting and the other is Jason House's evidence. Jason House's evidence was completely different than Yassin Sheikh-Ali (sic.), who was the main witness as Kanaf alleged that he was the person that Khan had talked to about Hari Nandan. Then it means that Kanaf cannot rely on House's evidence to prove just cause. However, the minutes of the meeting cannot be taken, on its own, sufficient evidence (sic.) to prove just cause since there was no evidence to prove that Khan had actually said the derogatory remarks against Hari Nandan. Under the Employment Standards Act, the onus to prove just cause for termination is on the employer, and Kanaf has been unable to prove that."

In my view, the delegate did not fairly consider the evidence before her. The question of whether the derogatory comments were, in fact, made, largely comes down to the relative credibility of House and Sheikh-Ali. The delegate is certainly entitled to prefer the evidence of one over the other. It appears from the submission, quoted above, that the delegate completely and without reason discounted the House' evidence. There may well be good reason to do that. On the other hand, there may also be good reasons to not accept at face value the testimony of Sheikh-Ali. As a current employee of the Employer, he might have been concerned about his participation in a conversation where a supervisory employee was being "badmouthed," knowing that Khan had been terminated, and in the context of being interviewed by the delegate almost a year after the incident. As for the delegate's assertion that there was "no evidence to prove that Khan had actually said the derogatory remarks," that--in my view--is incorrect; there was the evidence of Jason House. The Employer is certainly entitled to rely on his statement to prove

just cause as part of its case. That does not mean, obviously, that the delegate has to accept it, but she has to consider it. As for evidentiary value the minutes of the May 11 meeting, the delegate may reject the minutes, or the evidence contained in them, in whole or in part. All the same, the delegate must consider the evidence fairly and resolve conflict in the evidence. Simply to reject them--"because there was no unbiased witness there"--is not appropriate. In this case, it is clear that the Employer was in the habit of recording its meetings. Whether or not the minutes accurately reflect what transpired at the meeting is capable of being determined through the evidence of the participants, Khan, Saretzsky and Shmilovitch. Their respective evidence may be found to be more or less reliable or credible in the circumstances. I adopt the words of the B.C. Court of Appeal in *Faryna v. Chorny*, [1952] 2 D.L.R. 354, at 357:

".... the best test of the truth of the story of a witness ... must be its harmony with preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in the place and in those conditions."

As noted, I have different conclusions from the evidence than the delegate. In all of the circumstances, I am of the view that Khan did, in fact, make the comments about Nandan. I also find that he did not deny making the statements at the May 11 meeting. There is no dispute in the evidence that Khan refused to apologize for making the statements. Khan says he did not make the statements and that was the reason he did want to apologize.

The question then becomes whether the Employer in the circumstances had cause for the termination? On balance I am of the view that the Employer did not have cause. In other words, Khan's conduct does not merit termination. In *Clare v. Moore Corp. Ltd.*, [1989] O.J. No. 2071 (Ont. District Ct.), the court upheld the termination of a long-term employee following a confrontation with a manager. To put it mildly, he questioned the competence of the manager. Among other things, he called him "a fucking asshole who can't manage" in a confrontation that was seen or heard by other employees. The court found the behaviour to be "all of the following: intentional, spontaneous, unprovoked, insulting, abusive, insubordinate and unacceptable by any standard" and found that his behaviour had repudiated the employer-employee relationship. The principles in *Clare* have been accepted by the courts in British Columbia (see, for example, *Kordyban v. Riso Canada Inc.*, [2000] B.C.J. 641 (B.C.S.C.)). On the whole, while I agree that the comments are inappropriate, particularly as they were made in front of a subordinate employee in the presence of House, I do not find that the comments made by Khan against the field operations manager--that he was "unable to make a decision," that he would "need permission to go to the bathroom," that he was "hiding out in the office on Sunday (sic.)," and that he was "scared of his own job"--are of the same insubordinate character as in *Clare* and *Kordyban*. In my view, the Employer over-reacted. While I agree that Khan should have apologized for his critical comments, and I am concerned that he did not, I am of the view that they did not seriously undermine the Employer's authority in the workplace or Khan's ability to do his job. Nor did I, based on the evidence, see any basis for the Employer's assertion that its business was affected in any way. Based on the evidence before me, I am not satisfied that the comments, in the context of an otherwise "good" employee, constituted a repudiation of

the employment relationship such that it justified termination. In the result, I uphold the Determination with respect to the termination of Khan and he is, therefore, entitled to compensation for length of service.

## 2. Management Status

Turning to the more complex issue, whether Khan is a manager, Section 1(1) of the *Regulation* under the *Act* defines, *inter alia*, “manager”:

1. In this Regulation:

“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 issue of whether a person is a manager has been addressed in a number of decisions of the Tribunal. In *T & C Ventures Ltd.*, BCEST #D152, the Tribunal stated: “The issue is whether or not Taylor’s primary employment duties consisted of supervising or directing other employees.”

In *Amelia Street Bistro*, BCEST #D479/97, reconsideration of BCEST #D170/574, the reconsideration panel noted, at page 5:

“... We agree that the amount of time an employee spends on supervising and directing other employees is an important factor in determining whether the employee falls within the definition of manager .... We do not, however, agree that this factor is determinative or that it is the only factor to be considered. The application of such an interpretation could lead to inconsistent or absurd results.

The task of determining if a person is a manager must address the definition of manager in the *Regulation*. If there are no duties consisting of supervising and directing other employees, and there is no issue that the person is employed in an executive capacity, then the person is not a manager, regardless of the importance of their employment duties to the operation of the business....

Any conclusion about whether the primary employment duties of a person consist of supervising and directing employees depends upon a total characterization of that person’s duties, and will include consideration of the amount of time spent supervising and directing other employees, the nature of the person’s other (non-supervising) employment duties, the degree to which the person exercises the kind of power and authority typical of a manager, to what elements of supervision and direction that power and authority applies, the reason for the employment and the



nature and size of the business. It is irrelevant to the conclusion that the person is described by the employer as a “manager”. That would be putting form over substance. The person’s status will be determined by law, not by the title chosen by the employer or understood by some third party.

We also accept that in determining whether a person is a manager the remedial nature of the *Act* and the purposes of the *Act* are proper considerations. Typically, a manager has a power of independent action, autonomy and discretion; he or she has the authority to make final decisions, not simply recommendations, relating to supervising and directing employees or to the conduct of the business. Making final judgements about such matters as hiring, firing, disciplining, authorizing overtime, time off or leaves of absence, calling employees in to work or laying them off, altering work processes, establishing or altering work schedules and training employees is typical of the responsibility and discretion accorded to a manager.... It is a question of degree, keeping in mind the object is to reach a conclusion about whether the employee has and is exercising a power and authority typical of manager. It is not sufficient simply to say that a person has that authority. It must be shown to have been exercised by that person.”

In my view, it is not the intent of the definition of “manager” in the legislation to include first line supervisors and foremen who do not frequently exhibit the power and authority typical of a manager. Such authority, which is question of degree, typically includes the power of independent action, autonomy and discretion with respect to decisions affecting the conduct of the business. The authority must be shown to be exercised by the employee said to be a manager. In order to be employed in an executive capacity, the person must have “duties in such capacity relate to active participation in control, supervision and management of business”.

I approach the definition of “manager” with the following principles in mind. It is well established that the definitions are to be given a broad and liberal interpretation. The basic purpose of the *Act* is the protection of employees through minimum standards of employment and that an interpretation which extends that protection is to be preferred over one which does not ( *Machtiger v. HOJ Industries Ltd.*, <1992> 1 S.C.R. 986). Moreover, my interpretation must take into account the purposes of the *Act* (*Interpretation Act*). The Tribunal has on many occasions confirmed the remedial nature of the *Act*. Section 2 provides (in part):

2. The purposes of this Act are as follows:

- (a) to ensure that employees in British Columbia receive at least basic standards of compensation and conditions of employment;

I note, first, that there is generally agreement between the parties that the area manager’s position includes a component referred to as “mobile patrol.” This entails the area manager patrolling sites where there is no security officer in place. As I understood the evidence, both from Khan and Tandir Chaunhry, a former area manager, who testified on his behalf, the amount of time



spent on “mobile patrol” would fluctuate but could reasonably take about 50 per cent of the time. The other 50 per cent of the time clearly had elements of supervision and direction of employees.

According to the Employer, Khan’s was a manager. The Employer relies on the following:

1. He was a member of the management team. As such, he participated in management meetings. These meetings dealt with, among others, protocol and policy.
2. Khan was paid a salary and given a raise when he was promoted to area manager. There was a clear understanding that, as a manager, he was not entitled to overtime. The Employer says that Khan fully understood and accepted this arrangement. Khan started with the Employer as a security officer. As a security officer, he was paid overtime.
3. Khan allocated his own working hours.
4. Khan made decisions regarding which security officers were to be placed at which sites. This impacted on their wage rates. As area manager Khan had the knowledge of the officers and the requirements of the different sites. John Scott--”and accounting type”--did not have that knowledge to allocate security officers, his main responsibilities being payroll and billing. Scott, who is now semi-retired, is, in any event, only available during normal business hours. The Employer’s evidence on this point was not entirely unequivocal. Saretzky explained that the area managers made the decisions regarding schedules. Shmilovitch, on the other hand, explained that Scott “relied on Khan, who had clear input.” Scott’s testimony, as well, in more in line with the latter. He explained that he was responsible for scheduling until June of 2000, when he retired. He did, however, explain that he relied on the input from the area managers for scheduling and placement officers.
5. The business operates 24 hours a day, 7 days a week. The area managers work out in the field, on weekends and statutory holidays, when there is no one in the office--and are “running the company from their vehicle”--and they have the authority to deal with situations as the arise, including calling in security officers, taking client calls and dealing with new clients.
6. He was responsible for scheduling and amending schedules for employees during his shift, including authorizing overtime.
7. While Khan did “mobile patrol,” his “main job was supervision of the guards.” The Employer also stated that it is “standard” in the security business for managers to do “mobile patrol.”
8. The Employer agreed that Shmilovitch had to be immediately informed of any incident, even in the middle of the night. The reason for this is that he deals with the customers and had to be in a position to go to the customer and indicate what action was taken in response to any

particular situation. The Employer submits that this does not mean that Khan did not have authority.

9. Khan trained security officers. He had, among others, trained Nandan.
10. Area managers had the authority to fire security officers. The Employer's witnesses testified that, based on an incident "early on" when a terminated security officer assaulted a manager, the area managers were instructed to ask the officer in question to come to the office the next morning rather than terminate him or her on the spot if they were concerned about their safety.
11. The area managers have the authority to discipline and reprimand guards.
12. The area managers evaluate officers.
13. Khan was one of two (fully) licensed managers, registered with the Security Programs Division of the Ministry of the Attorney General, "who supervise our guards." Nandan was the other.
14. The Employer's business is subject of a certification under the British Columbia *Labour Relations Code* and the area managers are excluded from the bargaining unit.
15. When Khan was area manager there were some 120-130 officers and four area managers. Until shortly before Khan's termination, the latter were, according to an organizational chart submitted but the Employer, supervised by the director of operations, Michael Saretzsky. When Nandan was appointed field operations manager, area managers reported to him.

The evidence submitted on behalf of Khan's included the following:

1. He said that when was promoted, it was to the position of supervisor, not manager. The manager title was subsequently used because of a certification application under the *Labour Relations Code*.
2. He said he did not hire anyone. Chaundhry also stated that he did not have the authority to hire or fire. Chaundhry agreed that he signed a job description for area managers which expressly referred to the power to hire and fire. He signed this--which stated that he had these powers since his appointment as a manager in October 1998--one day before leaving his job because he wanted to get a good reference from the Employer.
3. He explained that he was "not part of the [management] meetings." He was only there to report on "what guards were working, whether they were wearing uniforms etc." Chaundhry agreed that he attended management meetings and that area managers were expressly told that they had the authority to hire and fire.

4. Khan testified that he had no access to guard files. They were locked up in the office. (The Employer did not agree with this).
5. Khan stated that his main function was “mobile patrol” and that he did not supervise officers other than checking that they were “not sleeping.” Chaundhry explained in his direct testimony that his main function, as an area manager, was to patrol sites and “deliver papers”--“that’s all.” He subsequently elaborated on this aspect: he would “go to sites, observe and write reports for head office”
6. Khan denied training guards--he “didn’t teach them anything.” He denied doing site orientation with guards. He explained that he would rely on officers to inform other officers of “what their duties are.” Chaundhry agreed that he trained officers, including site orientation. This included going through the site and the site order with them, explain what they were required to do, procedures, keys, who were allowed on site and generally ensure they were “properly orientated.”
7. While Khan denied doing officer evaluation, Chaundhry agreed that he did--you have to supervise, it’s part of being a supervisor.” Chaundhry also agreed, in redirect, that he had disciplined security officers.
8. As for “no shows”--*i.e.*, when the security officer did not show up for his or her scheduled shift--Khan said he would call Scott--the person making the schedule--who would then assign an officer. Chaundhry’s evidence was that he would normally call in another officer. In cross examination, he agreed that would find a replacement and that he would not contact Scott. Chaundhry also explained that he had to ensure that the shift was filled and that he could have guards stay until their replacement showed up. He also explained that Scott “pretty well” had set up the schedule for the officers on a weekly or bi-weekly basis and that he did not schedule officers.

It is clear from the Determination that there was an element of supervision in the area manager’s position. The determination of management status can be factually complex. It is often a question of degree.

From the Determination, it appears that the delegate confined herself to interviewing former employees who were area managers (apart from Sheikh-Ali). One of these former area managers, Ben Weston, who was employed as such around the time of Khan’s employment, told the delegate that he had the authority to discipline guards and had done so verbally. This manager also told the delegate that he was told that he had the authority to dismiss guards but at meetings, management said they preferred to deal with dismissal of guards themselves. This manager explained that he had never hired or terminated any employees. Chaundhry, who, as noted, also testified at the hearing, was also interviewed by the delegate, denied having the authority to hire or terminate guards. Another area manager agreed that he would apply verbal discipline or write a report to management. It appears from the Determination that the delegate did not similarly interview current area managers. The Determination notes that the Employer

submitted written statements from current area managers regarding their responsibilities and authority. These statements indicated that area managers had the power to hire and fire. The delegate also notes that two employees terminated (in 2000) by area managers occurred after Khan had left Kanaf from which she inferred that “does not automatically mean Khan had authority to terminate employees at that time.” From a review of the job descriptions, submitted into evidence at the hearing, it clear that at least two purport to suggest that area managers had the authority to hire and fire at the time of Khan’s termination, namely those of Chaundhry and House. As noted above, Chaundhry agreed that he signed a job description for area managers which expressly referred to the power to hire and fire.

The delegate appears to have relied on the former area managers:

“The evidence from the past 4 supervisors/area managers has one common theme. That they all emphasized at least half of their time or more was on mobile patrol which had nothing to do with directing or managing guards. The rest of the time the supervisors/area managers checked on the guards at sites. They had authority to reprimand guards, which involved verbal discipline or writing a report to the management. There was no authority to terminate or hire employees. They had no independent decision making authority since the management expected all problems to be on report and major problems had to be notified by phone immediately at sites (sic.)”

In my view, the delegate did not fairly consider the whole of the evidence before her. There was actually evidence before her--that of House and Chaundhry--to support the proposition that area managers had the authority to hire and fire. As noted above, I agree that the delegate is entitled to prefer the evidence of one over that of another. Simply because someone is a past employee, and another is a current employee, is not--per se--grounds for rejecting evidence. The delegate must consider the evidence fairly and resolve conflict in the evidence (see *Faryna v. Chorny, above*). Ultimately, and on balance, I am of the view that the delegate did not do that.

Commenting briefly on the evidence before me, I am of the view that the Employer’s evidence considered in the light of *Faryna v. Chorny, above*, is more credible. I find that Khan consistently understated his responsibilities as an area manager compared, even, to his own witness, Chaundhry. In the circumstances, where there is a conflict, I prefer the evidence tendered by the Employer.

While Khan did mobile patrol, for approximately 50 per cent of his time, I agree with the Employer that his main job was supervision of the guards. I accept the evidence that Khan was a member of the management team and participated in management meetings dealing with protocol and policy. Khan allocated his own working hours. Khan made decisions regarding which security officers to be placed at which sites. This impacted on their wage rates. As area manager Khan had the knowledge of the officers and the requirements of the different sites. He was responsible for amending schedules for employees during his shift, including authorizing

overtime. Khan trained security officers. Khan had, for example, trained Nandan. I accept that the area managers have the authority to discipline and reprimand guards. Area managers had the authority to fire security officers. The area managers evaluate officers. Moreover, Khan was one of two (fully) licensed managers, registered with the Security Programs Division of the Ministry of the Attorney General, “who supervise our guards” (Nandan being the other). In considering Khan’s role as a manager I am mindful, as well, of the nature of the business. The business operates 24 hours a day, 7 days a week. The area managers work out in the field, on weekends and statutory holidays, when there is no one in the office--and are “running the company from their vehicle”--and they have the authority to deal with situations as they arise, including calling in security officers, taking client calls and dealing with new clients. When Khan was area manager there were some 120-130 officers and four area managers. Until shortly before Khan’s termination, the latter were, according to an organizational chart submitted but the Employer, supervised by the director of operations, Michael Saretzky. When Nandan was appointed field operations manager, area managers reported to him.

In conclusion, on balance, I accept that Khan was a manager as defined in the *Regulation*. On balance, I agree with the Employer that he was “a person whose primary employment duties consist of supervising and directing other employees”. In reaching this conclusion, I am mindful of the remedial purposes of the *Act*. In the result, I find that the delegate erred and I set aside the portion of the Determination which awarded Khan overtime wages. As a manager he is not entitled to overtime wages (*Regulation* 34(1)(f)).

## **ORDER**

I order that the Determinations dated October 26, 2000 be confirmed in part and cancelled in part. I uphold the Determination that the Employer did not have just cause for the termination of Khan and that he, therefore, is entitled to compensation for length of service as awarded in the Determination. I accept the appeal with respect to the conclusion that Khan was not a manager and, therefore, entitled to overtime wages. I cancel the portion of the Determination awarding Khan compensation for overtime wages.

***IB S. PETERSEN***

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**Ib S. Petersen**  
**Adjudicator**  
**Employment Standards Tribunal**