

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 -

T & C Ventures Ltd.
Operating as Town & Country Motor Hotel
("T & C")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton
FILE NO.: 96/137
DATE OF HEARING: June 21, 1996
DATE OF DECISION: July 2, 1996

DECISION

APPEARANCES

Shawn C.D. Neylan	on behalf of	T & C Ventures Ltd.
Alice J. Taylor		in person
Joe LeBlanc	on behalf of	Director of Employment Standards

OVERVIEW

This is an appeal by T & C Ventures Ltd. operating as Town & Country Motor Hotel (“T & C”), pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against Determination CDET# 001001 which was issued by a delegate of the Director of Employment Standards on February 2, 1996.

T & C seeks to have the Determination overturned on two grounds: Alice Taylor (“Taylor”) was a manager for purposes of the *Act* and *Regulation*; and, if found to be an employee, Taylor is not owed wages as set out in the Determination because the Director’s delegate did not make proper calculations for meal breaks.

ISSUE TO BE DECIDED

There are two issues in dispute:

- Was Taylor a manager for purposes of the *Act* and *Regulation*? and
- Does T & C owe wages to Taylor as set out in the Determination?

FACTS

Counsel for T & C and the Director’s delegate agreed, at the beginning of the hearing, to the following facts:

- Taylor was employed by T & C from March, 1994 to January, 1995.
- Taylor’s salary was \$1,300.00 per month (\$8.97/hour) during the term of her employment.

- Taylor responded to an advertisement placed by T & C in **The Calgary Sun** in February, 1994 for a “Catering & Sales Manager.”
- For the period July 13, 1994 to January 13, 1995 T & C paid Taylor wages totalling \$8,168.97.

There was no dispute about the fact that Taylor was the only full-time person in the Sales & Catering department.

EVIDENCE

Carrie Jokanovich (“Jokanovich”), general Manager of the Town & Country Motor Hotel, gave evidence under oath concerning Taylor’s duties and responsibilities at the hotel. Jokanovich testified that Taylor’s primary duties were “...booking, running and billing” meetings and catered functions at the hotel. Her evidence was that this required coordinating the activities of six departments in the hotel (Front Desk; Kitchen; Janitorial; Laundry; Bar; and Food Service). Each of these departments had a supervisor or manager. In summary, Jokanovich’s evidence concerning these coordinating activities was:

- Front Desk: staff received and relayed messages from guests for Taylor; staff processed billing and received payments for catered events.
- Kitchen: Taylor informed Kitchen of menu and number of guests for each event; if food preparation or presentation was not acceptable, Taylor would bring to the attention of chef or kitchen staff.
- Janitorial: Taylor gave instructions to the janitor concerning set-up and cleaning meeting rooms and ballrooms.
- Laundry: Taylor ensured an adequate supply of clean table linen was provided for each event.
- Bar: Taylor supervised the set-up of bars for catered events and ensured staff provided proper beverage service.
- Food Service: Taylor’s responsibility was to ensure that food service at catered events was provided according to guests requirements. This included assigning tasks to food servers and organizing all aspects of food service delivery.

Staff Scheduling for catered events was the responsibility of Barb Jokanovich (owner and Food/Beverage Manager) based on information about the events which Taylor provided to her.

Taylor recorded her hours of work on a “Daily Time Ticket” (EX#2), although Jokanovich’s evidence was that these time tickets were not used for payroll purposes since Taylor received a salary of \$1,300.00 per month. Taylor was free to schedule her own meal breaks and rest breaks, which were not recorded. Jokanovich estimated Taylor’s breaks amounted to approximately 1 hour per day.

Under cross examination Jokanovich gave the following evidence:

- Taylor did not have the authority to hire staff but did have the authority to reprimand or dismiss staff in the Catering department, although that authority was never exercised during her term of employment;
- Taylor did not have the authority to negotiate menu prices with guests although she had some latitude, within set guidelines, to vary prices charged for meeting rooms;
- Barb Jokanovich had established guidelines concerning when Taylor should send food servers home at the end of a catered event; and
- Taylor did serve food at events, working “shoulder to shoulder” with other food servers, although she did so at her own discretion.

Taylor’s evidence was that her primary responsibilities were to book meetings or catered events and to co-ordinate arrangements for such meetings or events. This required her to provide information to each department in the hotel so that each department knew what it had to prepare for each event. She also testified that she set up rooms with the janitor, served food or coffee and removed dishes, and tidied rooms after events were completed.

Taylor gave evidence that her responsibilities did not include hiring, scheduling, disciplining, performance appraisals, reprimanding nor dismissing employees. further, she did not prepare budgets, set policy nor approve vacation requests. According to Taylor, these responsibilities fell to either Carrie Jokanovich or Barb Jokanovich.

According to Taylor, her duties and responsibilities were consistent with the job description (EX #11) given to her by Jokanovich which described the main functions of the job as: “Marketing, Booking, Set-up, Serving, Billing, Follow-up.” She also testified that she did not record breaks on her Daily Time Ticket because she very rarely took breaks (“2 lunch breaks per week and never took coffee breaks”).

With respect to her hours of work, Taylor testified that she maintained a record of her start/stop times in a daytimer/diary (EX #10), but did not record break times in it. Under cross examination, she estimated that on average her breaks amounted to 10 minutes per day.

Taylor’s also testified under cross examination that she was “in charge” of and “supervised” employees who worked setting up and serving at catered events.

ANALYSIS

Was Taylor a “manager” or an “employee”?

Section 1 of the *Employment Standards Regulation* (the “Regulation”) defines a manager as:

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

In this appeal, counsel for T & C acknowledges that Taylor was not employed in an executive capacity. Therefore, the issue in dispute is whether Taylor’s **primary** employment duties consist of supervising and directing other employees. The title given to a position is not relevant in determining whether the incumbent is a “manager” or an “employee” for purposes of the *Act*. Thus, the fact that T & C advertised for a “Catering and Sales Manager” is not relevant. Taylor’s employment duties determine whether she was a manager or not.

The evidence establishes that part of Taylor’s responsibilities included supervising food servers at catered events. The issue is whether or not Taylor’s **primary** employment duties consisted of supervising or directing other employees.

I am unable to conclude that supervising and directing other employees was Taylor’s primary employment duty. The evidence shows that Taylor spent a considerable portion of her time performing duties other than supervising and directing employees. There was no evidence to establish that she supervised staff in the Kitchen, Laundry or Front Desk. Her involvement with those departments consisted primarily of providing pertinent information about at meetings and catered events. Taylor’s job description emphasizes the sales and marketing functions which she carried out as the sole full-time employee in the Catering department. Taylor did give direction to the janitor, food servers and bartenders. However, these were not her primary duties.

Wages owing to Taylor

The Director’s delegate determined that T & C owes wages to Taylor for overtime hours worked and for statutory holiday pay.

The Determination issued on February 2, 1996 showed the total amount payable to Taylor as \$1,779.42. However, at the beginning of the hearing the Director’s delegate provided a revised Calculation Schedule to show the amount of wages payable to Taylor as \$1,004.40 due to a change in the hourly wage rate which was used to calculate the wages owing.

There is no dispute about the amount of wages paid by T & C to Taylor during her employment.

T & C argues the amount of wages payable in the Determination is wrong because it does not reflect meal breaks and rest breaks taken by Taylor. The Calculation Schedule uses the hours recorded on the Daily Time Tickets (except for the period July 18 - 31) as the hours worked by Taylor and does not include any adjustment for meal or rest breaks.

There is a very large discrepancy in the evidence given by Jokanovich and Taylor concerning how much time Taylor took for breaks. Jokanovich says an average of 1 hour per day; Taylor says about 10 minutes per day. However, Jokanovich was clear that Taylor was free to schedule her own breaks and they were not recorded. Clearly these are no more than estimates of the average duration of Taylor's breaks each day.

Section 28 of the *Act* sets out the payroll records which an employer is required to keep for each employee. In particular, Section 28(1)(c) and 28(1)(d) require the following records to be kept:

- (c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis;
- (d) the hours worked by the employee on each day, regardless of whether the employee is paid on an hourly or other basis;

Section 32 of the *Act* states:

- (1) An employer must ensure
 - (a) that no employee works more than 5 consecutive hours without a meal break; and
 - (b) that each meal break lasts at least a 1/2 hour.

This section of the *Act* clearly places the responsibility on an employer to schedule meal breaks in accordance with the *Act*.

There is no documentary evidence to corroborate the oral evidence given by Jokanovich or Taylor. However, it is clear that Taylor did have some breaks during her employment. She stated candidly that she had "smoke breaks" rather than coffee breaks and had lunch breaks two or three times per week. When I consider all of the evidence concerning Taylor's breaks, I conclude that it is unlikely that her breaks averaged 10 minutes per day or 1 hour per day. It seems to me, on the balance of probabilities, that the average duration of Taylor's breaks was 1/2 hour per day.

ORDER

I order, pursuant to Section 115 of the *Act*, that Determination CDET# 001001 be varied to show \$502.20 as the amount of wages payable by T & C to Taylor.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC:sf