



An appeal

- by -

Freshslice Operating Ltd. operating as Freshslice Pizza ("Freshslice")

- 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: | Lorne D. Collingwood |
|---------------------|----------------------|
| FILE No.: | 2000/774 |
| DATE OF HEARING: | April 2, 2001 |
| DATE OF DECISION: | April 18, 2001 |







DECISION

OVERVIEW

Freshslice Operating Ltd. operating as Freshslice Pizza (which I will refer to as "Freshslice" and "the employer") appeals an October 23, 2000 Determination by a delegate of the Director of Employment Standards ("the Director"). The appeal is pursuant to section 112 of the *Employment Standards Act* ("the *Act*"). The Determination orders Freshslice to pay Jayda Martinolich wages totalling \$1,112.78, interest included. It also orders Freshslice to pay Sabrina Arai \$392.90 in wages, interest included.

The Determination is that Freshslice failed to pay the employees their regular wages, overtime wages and vacation pay. Underlying the order to pay Martinolich is a decision that there is no evidence of theft whatsoever.

Freshslice appealed both parts of the Determination. In filing the appeal, Freshslice concedes the order to pay vacation pay but the Determination is said to be wrong in that it awards overtime pay for the period when Arai was a manager and it awards work for two days in October of 1999 (the 8th and the 24th). The employer also appeals the order to pay Martinolich and in that regard it claims that there is a witness who is able to verify "missing cash".

APPEARING FOR THE HEARING

| Jayda Martinolich | On her own behalf |
|-------------------|-------------------|
| Sabrina Arai | On her own behalf |

ISSUES TO BE DECIDED

The appellant claims that Martinolich is guilty of theft.

The appellant claims an error in respect to days worked by Arai.

I find that I need not decide whether the appellant is or is not being ordered to pay overtime wages to a manager. Freshslice has misread the Determination and is mistaken in concluding that it is being ordered to pay Arai overtime pay for work after the 16th of November.

FACTS

The appeal was filed by Ray Russell, President of Freshslice. The Tribunal asked for written submissions and on receiving the written submissions, it decided that it would hold a hearing in the appeal so that an Adjudicator could hear directly from the parties and witnesses.

Notice of the hearing is dated March 8, 2001. The notice advises the parties that the hearing would held be at Library Square, 8^{th} Floor - 360 West Georgia Street in Vancouver and that it would be at 9:00 a.m. on the 2^{nd} of April, 2001.



On arriving for the appeal hearing at the appointed time and place, I found that only the employees were present. It is a policy of the Tribunal, that Adjudicators wait 20 minutes for the appellant. I kept the Director and the Director's witnesses waiting for 40 minutes in the hope that the person or persons that were to represent the employer were simply held up in traffic but, no one for the employer appearing, I sent the employees on their way.

ANALYSIS

Freshslice was notified of the appeal hearing but it did not attend the hearing, nor has it provided the Tribunal with what is a reasonable explanation for the failure to attend. It is Tribunal policy to consider an appeal abandoned where the appellant does not appear for his or her hearing and does not offer any reasonable explanation for the absence.

I am satisfied that it is either that the appeal has been abandoned or it is that it is frivolous, vexatious, trivial or not brought in good faith and one to dismiss on that basis, as the Tribunal may do pursuant to section 114 (1)(c) of the *Act*.

Freshslice has failed to show that the Determination is in any way in error. It claims that Arai did not work two of the days for which she is awarded pay but it has failed to provide clear proof of that. And while Freshslice, on filing its appeal, again suggested that moneys went missing during Martinolich's shift, I find that, as matters are presented to me, there is in fact no evidence of theft at all.

ORDER

The appeal is dismissed.

The Determination which orders Freshslice Operating Ltd. operating as Freshslice Pizza to pay Jayda Martinolich \$1,112.78 and Sabrina Arai \$392.90 is confirmed and to those amounts I add whatever further interest has accrued pursuant to section 88 of the *Act*.

LORNE D. COLLINGWOOD

Lorne D. Collingwood Adjudicator Employment Standards Tribunal