

**EMPLOYMENT STANDARDS TRIBUNAL**  
In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C. 113

- by -

Henry Pronticki for Shortee's Canadjun Restaurant Ltd.  
("Shortee's")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** James Wolfgang

**FILE NO.:** 1999/171

**DATE OF DECISION:** May 3, 1999

## DECISION

### OVERVIEW

This is an appeal by Henry Pronnicki for Shortee's Canadjun Rastaurant (Shortee's) pursuant to Section 112 of the *Employment Standards Act* (the "Act") from a Determination dated March 12, 1999 issued by a delegate of the Director of Employment Standards (the "Director").

The Director's delegate determined Shortee's owed Steve Keefer (Keefer) \$156.69 for wages, vacation pay and for deductions from his final paycheck which was not authorized by Keefer. Interest in the amount of \$5.39 had been added for a total of \$162.08. In addition a penalty of zero dollars (\$0.00) had been assessed.

Shortee's had employed Keefer as a cook for 9 nine days from September 3 to 12, 1998. The Determination refers to September 3 to 12, 1999 however I believe that to be an obvious error.

Keefer had an agreement to work 2 hours overtime each day to do cleanup. Shortee's only paid Keefer at straight time for this work as they considered him to be a manager. Keefer does not believe he was employed in any managerial capacity and should be paid overtime for the extra hours.

Keefer had purchased a work uniform from a supplier when he commenced work. This was paid for by Shortee's and the cost of \$63.09 was deducted from his final paycheque. Keefer claims he left the uniform at the restaurant when he left and should not be required to pay for it. There is some confusion as to the whereabouts of the uniform as the employer claims the pants were not returned while Keefer claims he left uniform at the restaurant when he left. The employer also claims the uniform, less the pants, was not in a usable form having been stapled over a window in the basement suite which apparently Keefer occupied. The delegate indicates two employees agree the uniform was returned when Keefer left.

At some time after Keefer left Shortee's there was a management change and Mr. Pronnicki became the manager or principal officer of the restaurant. He was apparently not employed by the restaurant at the time of Keefer's employment but was a partner in the business. We have no evidence as to his current title or position in any of the material supplied however he was the person who filed the appeal.

### ISSUE TO BE DECIDED

Does Shortee's owe Keefer any money and, if so, how much?

## ANALYSIS

There is no dispute over the fact that Keefer had an agreement to work 2 hours overtime each day. Keefer claims he worked in excess of those hours but agrees he was limited to 2 hours of overtime.

There is no evidence submitted that would indicate Keefer worked as a manager although he may have done some scheduling of hours and ordering of food. Keefer claims neither schedules were posted nor was anything ordered without the partner's approval.

I find the claim for overtime as outlined in the Determination is allowed.

The dispute over the uniform has a number of facets, however one point must be given primary consideration. Section 21 of the *Act* states:

- (1) Except as permitted or required by this Act or any other enactment of British Columbia or Canada, an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose.

I have no evidence to indicate Keefer authorized Shortee's to deduct any monies from his pay for any purpose, including the cost of the uniform. If the uniform was not returned or was not in a usable form it is not something that I can address in this decision. There are other avenues available for that matter to be dealt with.

I find the deduction of \$63.09 to be in violation of section 21(1) of the *Act* and is not allowed.

## ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed, subject to the calculation of the appropriate interest.

**James Wolfgang**  
**Adjudicator**  
**Employment Standards Tribunal**