

An appeal

- by -

Associated Services & Management Ltd. (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.: 2002/105

DATE OF DECISION: May 15, 2002





DECISION

SUBMISSIONS:

Mr. Ronald Wright on behalf of the Employer

Mr. Luke Krayenhoff on behalf of the Director

OVERVIEW

This is an appeal by the Employer, the operator of a gas bar, pursuant to Section 112 of the *Employment Standards Act* (the "Act") of a Determination of the Director's Delegate issued on February 8, 2002 (the "Determination"). In the Determination, the Delegate concluded that Mr. Christopher Williams, who had worked as an assistant manager from June 1997 to August 19, 2001, was owed \$8,624.38 on account of regular wages (Section 17(1)), double overtime wages (Section 36(1)), overtime (Sections 41(1)-(2)), statutory holiday pay (Sections 45 and 46) and annual vacation pay (Section 58).

FACTS AND ANALYSIS

The Employer, as the Appellant, has the burden to persuade me that the Determination is wrong. For the reasons set out below, I am of the view that it has not met that burden and that the appeal, therefore, must be dismissed.

The Delegate's findings and conclusions may be briefly summarized as follows. Based on the available evidence, including the Employer's records and interviews of independent witnesses, the Delegate found that Mr. Williams worked more than 40 hours per week and did not receive 32 hours free from work each week. He also found that Mr. Williams worked additional time each day, which he estimated to be on average one half hour. According to the Determination, the Employer's position was that Mr. Williams, while scheduled to work 40 hours per week, switched shifts with other employees. The Employer knew but did not interfere with this arrangement. The Employer disagreed with the additional daily duties: it was more like five minutes and Mr. Williams was paid a higher hourly rate to take care of those duties.

The basic facts upon which the Determination is founded is not seriously in dispute. While it is clear that the Employer takes issue with the daily additional one half hour, there are no particulars to suggest otherwise. The basic point made by the Employer is that Mr. Williams agreed to the arrangement and received a higher hourly rate to do these duties.

In my view, as already indicated, the appeal must be dismissed. There is nothing to suggest that the Delegate erred in fact or law. I accept that Mr. Williams worked the hours the Delegate found him to have worked. I note that the Employer's submission to the Tribunal states that the "records that were handed in reflected the actual shifts worked not the shifts scheduled." I agree that the arrangement-allowing Mr. Williams to switch with other employees for his "convenience"--in the circumstances resulted in regular wages and overtime wages being owing. Those wages would attract vacation pay. As well, Mr. Williams may well have agreed to work additional daily duties and time, in return for a higher hourly rate. While these arrangement may have been consensual, and there is nothing to suggest



otherwise, Section 4 of the *Act* provides that "an agreement to waive any of [the minimum] requirements is of no effect."

One final point needs to be addressed. The Employer alleges that the Delegate approached the investigation with "preset mind" and that he was not allowed an opportunity to support his position. There is nothing to support the contention that the Delegate did not approach the task before him with anything but an open mind. As to the second charge, the Delegate's submission to the Tribunal states that the Employer was provided with his preliminary findings and allowed to present additional evidence. The Employer did not respond and the Delegate issued his Determination. Based on the evidence before me, I reject this argument.

In my view, the appeal must fail.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter, dated February 8, 2002 be confirmed.

Ib S. Petersen Adjudicator Employment Standards Tribunal