

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 -

Spiman Ventures Ltd. operating as Subway
("Subway")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 98/015

DATE OF HEARING: April 30, 1998

DATE OF DECISION: May 1, 1998

DECISION

APPEARANCES

Michael McPherson on his own behalf

ANALYSIS

This is an appeal by Spiman Ventures Ltd. operating as Subway (“Subway”) under Section 112 of the *Employment Standards Act* (the “Act”) against a Determination which was issued by a delegate of the Director of Employment Standards (the “delegate”) on December 10, 1997.

The delegate determined that Subway owed wages to Denise Dumesnil (“Dumesnil”), Sherry Fitzpatrick (“Fitzpatrick”) and Michael McPherson (“McPherson”).

Subway appealed the Determination on January 2, 1998 claiming that no wages were owed to its former employees.

The Tribunal scheduled a hearing for this appeal to take place on April 30, 1998 at 9:00 a.m. at its offices in Vancouver. Although duly notified of the time and place of the hearing Subway did not attend and offered no explanation for its failure to attend. Dumesnil, Fitzpatrick and the delegate also did not attend the hearing.

The onus in this appeal is on the Appellant, Subway, to show that the Determination is in error. The Hearing Notice advised the parties that the Tribunal would decide the appeal despite a party’s failure to attend the hearing.

I have reviewed the Determination and the Appellant’s reasons for the appeal. I have also considered McPherson’s sworn testimony which supports the delegate’s finding that he was not a manager under the Act and therefore he is entitled to overtime and statutory holiday pay and further that he is entitled to compensation for length of service. In the absence of oral evidence provided by Subway I am unable to find sufficient grounds on which to vary or cancel the Determination with respect to McPherson. For the same reason I am unable to find any grounds on which to vary or cancel the Determination with respect to Dumesnil. However, I find that the Determination respecting Fitzpatrick should be cancelled. Fitzpatrick advised the Tribunal on March 5, 1998 that she had been paid in full by Subway.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated December 10, 1997 be varied by deleting the claim of Fitzpatrick and confirming the claims of Dumesnil and McPherson as set out in the Determination plus interest calculated in accordance with Section 88 of the *Act*.

Norma Edelman
Registrar
Employment Standards Tribunal

NE/sr