

An appeal

- by -

Golden Heights Estate Inn & Restaurant
("Golden Heights" or "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: Paul E. Love

FILE No.: 2003A/236

DATE OF DECISION: September 30, 2003

DECISION

OVERVIEW

This matter comes before me by way of a report back from the Delegate of the Director of Employment Standards (the “Delegate”), following a Decision (#D244/03) issued by me on July 29, 2003. Golden Heights Inn and Restaurant Ltd. (“Golden Heights” or “Employer”), appealed from a Determination dated March 31, 2003 (the “Determination”) issued by a Delegate of the Director of Employment Standards (“Delegate”) pursuant to the *Employment Standards Act, R.S.B.C. 1996, c. 113* (the “Act”). In Decision #D244/03, I confirmed the Determination with regard to wages for Anna Lactin, Alisa Mehmam, Laurie Nichols, Darlene Oliver, Lorri Lee Pereverzoff, and Jesse Ritco, against Golden Heights Estate Inn and Restaurant Ltd. (“Golden Heights”), and referred back to the Delegate the entitlements of Dean Engen, Eileen Frederickson, for adjustment based on the amounts received in cash by each employee. With the exception of cash advances to two employees, Dean Engen, Eileen Frederickson, which the Employer did not disclose to the Delegate during the course of the investigation, the balance of the allegations of error made by the Employer, were without foundation. I confirmed the Determination and referred to the Delegate for calculation the wage claims of Dean Engen and Eileen Frederickson, which shall be adjusted to reflect credit for cash received by each employee in the amount of \$300 and \$525 respectively.

The report back from the Delegate, on August 26, 2003, indicated that Mr. Engen was entitled to the sum of \$2181.80, and Ms. Frederickson was entitled to the sum of \$654.04. The revised amount owing to all the former employees of Golden Heights Estate Inn and Restaurant Ltd. was \$9975.54. The report back was circulated to all interested parties by the Tribunal. The Tribunal did not receive any further submissions from any party. I considered the report back from the Delegate and confirmed the Determination of March 31, 2003, as amended by the revised calculations set out in the Delegate’s August 26, 2003 report.

FACTS

On July 29, 2003 I issued a decision involving complaints made by a group of employees Dean Engen, Eileen Frederickson, Anna Lactin, Alisa Mehmam, Laurie Nichols, Darlene Oliver, Lorri Lee Pereverzoff, and Jesse Ritco, against Golden Heights Estate Inn and Restaurant Ltd. (“Golden Heights”).

By way of background, the material facts in the original decision were straightforward. Golden Heights Estate Inn and Restaurant Ltd. (“Golden Heights”) operated a restaurant and inn in Grand Forks, British Columbia. The directors and officers of that company were Graeme Wilson and Sonia Wilson. Graeme Wilson and Sonia Wilson, also the shareholders of Golden Heights, entered into an arrangement, dated for reference September 16, 2002, for 653702 B.C. Ltd. to purchase the shares of Golden Heights. The sole director and officer of 653702 B.C. Ltd. was B.L. B.L. was placed into the general manager position of the restaurant and effectively operated the restaurant from August 1, 2002 to October 30, 2002. Graeme Wilson and Sonia Wilson did not receive payment for the sale of the business and the transaction did not

complete. Mr. Wilson removed B.L. from the operation of Golden Heights on or about October 30, 2002. Golden Heights ceased operations in December of 2002, and a receiver has been appointed.

After considering the appeal submissions of the parties, I confirmed the Determination, with the exception of the amounts due to Dean Engen and Eileen Frederickson, which shall be adjusted to reflect credit for cash received by each employee in the amount of \$300 and \$525 respectively.

In the original decision I ordered as follows:

Pursuant to s. 115 of the *Act* the Determination dated March 31, 2003 is confirmed, with the exception that I refer to the Delegate the calculation of the entitlements of Dean Engen and Eileen Frederickson, which shall be adjusted to reflect credit for cash received by each employee in the amount of \$300 and \$525 respectively.

On August 26, 2003, the Delegate provided a memorandum to the Tribunal which attached calculations for Dean Engen and Eileen Frederickson, which credited amounts paid, and recalculated the interest. The Delegate found that Mr. Engen was entitled to \$2181.80, consisting of wages (less credit for amounts paid) in the amount of \$2144.00 plus interest of \$37.80. The Delegate found that Ms. Frederickson was entitled to the sum of \$654.04 which consisted of wages (less credit for amount paid) in the amount of \$642.63, plus interest in the amount of \$11.41. The revised amount owing to all the former employees of Golden Heights Estate Inn and Restaurant Ltd. was \$9975.54.

On August 26, 2003, the Tribunal issued a notice to all interested parties, attaching the Delegate's memorandum of August 26, 2003, and inviting further submissions by September 17, 2003. The Tribunal noted:

In your response, specify your reasons for agreeing or disagreeing with the calculations made by the Director. You must include a copy of all records and documents that support your position.

The Tribunal did not receive any submissions from any party.

ANALYSIS

I have reviewed the Delegate's memorandum, and accept those calculations are correctly setting out the entitlements of Dean Engen and Eileen Frederickson to the sum of \$2181.80, and \$654.04, respectively. The amount owing to all the employees arising out of the Determination dated March 31, 2003 is \$9,975.44.

ORDER

Pursuant to s. 115 of the *Act* the Determination dated March 31, 2003 as amended by the calculations of the Delegate of August 26, 2003, is confirmed. Dean Engen is entitled to the sum of \$2181.80 and Eileen Frederickson is entitled to the sum of \$654.04. All the employees of Golden Heights Estate Inn and Restaurant Ltd., which include Dean Engen, Eileen Frederickson, Anna Lactin, Alisa Mehmam, Laurie Nichols, Darlene Oliver, Lorri Lee Pereverzoff, and Jesse Ritco, are entitled to the sum of \$9,975.44.

Paul E. Love
Adjudicator
Employment Standards Tribunal