

**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 -

453428 B.C Ltd. operating as Bagel St. Café  
and Blackjack Food Services Ltd. operating as  
Subway Sandwiches and Salads

("453428 B.C Ltd.")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Paul E. Love

**FILE NO.:** 2000/319

**DATE OF DECISION:** August 8, 2000

## DECISION

### OVERVIEW

This is an appeal by 453428 B.C Ltd. operating as Bagel St. Café and Blackjack Food Services Ltd. operating as Subway Sandwiches and Salads (“453428 B.C Ltd.”) of a Determination, dated April 12, 2000, that relates to overtime pay for Elys MacDonald. The Delegate also found two companies which employed Ms. MacDonald to be related employers. While the employer raised an argument with regard to the related employer status, the employer provided no facts or information from which one could conclude that the Delegate erred in the related employer finding.

### ISSUES TO BE DECIDED

Did the Delegate err in finding an entitlement to overtime?

Did the Delegate err in finding that the two employers were related employers?

### FACTS

This matter proceeds by way of written submissions. The employer, 453428 B.C. Ltd. operating as Bagel Street Café, provided a very sparse written submission, which contains no evidence. It is a bare denial of the facts found in the Determination.

Elys J. MacDonald is a university student. She was employed from February of 1998 to April 1999, as a server/preparation person. From February 1998 to April of 1999 she worked at Bagel St. Café and at Subway Sandwiches and Salads. For the period April 1999 to August of 1999 she worked for Bagel St. Café only at \$7.50 per hour. Subway Sandwiches and Salads ceased operations in April of 1999.

Ms. MacDonald apparently agreed to forego overtime wages, if she could obtain hours at another work place which was supervised, and owned by Mr. Wong. Ms. MacDonald worked 13 - 20 hours per day during each pay period. The argument raised before the Delegate by the employer’s counsel was that there was an agreement between the parties, and the employer could have hired another person, but gave the hours to Ms. MacDonald to help her out. The Delegate found that this agreement (to work at two jobs, in return for no overtime) was an agreement that was not enforceable by virtue of s. 4 of the *Act*.

The Delegate further found that the two work sites were operated by a related employer. The Delegate found that the Ms. MacDonald had the same job at two restaurants. He found that there was common control and direction because Jack Wong was Ms. MacDonald’s supervisor at both restaurants, he was the manager at Bagel St. Café and he was the president /secretary of BlackJack (Subway). The Delegate found that there was an employment standards purpose for associating the entities, which was that the employee worked at both locations and claimed

overtime.

The Delegate found that Ms. MacDonald was entitled to the sum of \$4,076.67. The employer has not challenged the amount awarded by the Delegate, and therefore it is unnecessary for me to review the calculations in this decision.

### **ANALYSIS**

In an appeal before the Tribunal, the burden is on the appellant to demonstrate an error such that I should vary or cancel the Determination. The appellant has not presented any evidence challenging any of the findings concerning overtime and the finding that the companies were related companies. There is a bare allegation that there was no common shareholder, no common directorship, no common officer, and no common directing mind. The employer has not, however, filed any information concerning the shareholdings, directors, officers of each entity. Based on the information which is before me, the employer has not established any error in the Determination.

### **ORDER**

Pursuant to section 115 of the *Act*, I confirm the Determination of the Delegate made April 12,2000.

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**Paul E. Love**  
**Adjudicator**  
**Employment Standards Tribunal**