

Appeals

- by -

Mandair Distributors Ltd. and 444 Flowers Flowers Ltd.  
operating as Flowers Flowers & Florimport

- of Two Penalty Determinations 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:** John M. Orr

**FILE No.:** 2001/182 & 2001/183

**DATE OF DECISION:** June 26, 2001

## DECISION

### OVERVIEW

This is an appeal by Mandair Distributors Ltd & 444 Flowers Flowers Ltd. operating as Flowers Flowers and Florimport (“Mandair”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) from two Determinations (File No.060-249) dated February 7, 2001 and February 13, 2001 by the Director of Employment Standards (the “Director”) imposing penalties totalling \$2,100.00 and a \$500.00 penalty for alleged infringements of section 18 and Parts 4,5 & 6 of the *Act*.

The penalty determinations were issued because a delegate of the Director had determined that three employees had not been paid overtime and statutory holiday pay as required by the *Act*. The fundamental issue was whether the employees were “managers” and therefore excluded from the requirements of Part 4 and 5 of the *Act*. The Director determined that the employees were not managers.

Mandair appeals on the grounds that the employees were managers and therefore there was no infringement of the legislation and therefore no basis for the imposition of penalties.

### ANALYSIS

I have read the penalty determinations, the submissions of the employer and those of the director’s delegate and have concluded that the penalty determinations should be cancelled.

The penalty determinations were issued as a result of the findings of the Director’s delegate in a determination dated February 7, 2001 in which the delegate found that three employees were not “managers” and therefore were not excluded from the provisions of Part 4 and 5 of the *Act*. As a result of this determination there were grounds to impose the penalties because the employer had not complied with the Act.

However, Mandair appealed the determination about the status of the employees and in a decision BC EST # D344/01 the Tribunal found that the employees were managers and therefore cancelled the determination. In light of the finding of the Tribunal on this point there is no basis to impose the penalties contained in these two determinations and they therefore must also be cancelled.

**ORDER**

I order, under Section 115 of the Act, that the two penalty Determinations be cancelled.

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**John M. Orr**  
**Adjudicator**  
**Employment Standards Tribunal**