

**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 -

Gaind Holdings Ltd.

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** John M. Orr

**FILE No:** 1999/399

**DATE OF DECISION:** September 9, 1999

## DECISION

### OVERVIEW

This is an appeal by Gaind Holdings Ltd. ("Gaind") pursuant to Section 112 of the Employment Standards Act (the "*Act*") from a Determination (File No. ER#042-969), dated June 04, 1999 by the Director of Employment Standards (the "Director").

In the determination the Director's Delegate found that Gaind owed wages to an employee, Karnail Sidhu ("Sidhu") for overtime worked but not paid and vacation pay in the amount of \$3,237.10 (including interest to June 04, 1999). Gaind has appealed on the grounds that Sidhu was on salary and received bonus pay for any extra work done.

### ISSUE TO BE DECIDED

The issue to be decided in this case is whether the fact that Sidhu was on salary exempted the employer from paying overtime.

### FACTS AND ANALYSIS

At the outset it is important to note that Gaind has not appealed the Director's calculations of overtime hours worked, wages paid or unpaid, or holiday pay owing. Gaind's position is that because Sidhu was on salary he was not entitled to overtime pay. Gaind says that the arrangement was that Sidhu would receive his salary and in addition he could receive bonuses if he worked more than the basic hours. However such bonuses were discretionary.

Even if such an agreement was in place, it could not be effective to waive the requirements of the *Act* (section 4). The issue really is whether there is any obligation under the legislation to pay salaried employees overtime. There is no specific exemption under the *Act* or the *regulation* for salaried employees. It is also clear that salaried employees are included in the legislation. For example, section 27 requires the employer to give an employee a written wage statement including the employee's wage rate "*whether paid hourly, on a salary basis or on a flat rate*". Section 28 requires the employer to keep payroll records which again specifically includes salaried employees.

In my opinion the provisions of the *Act* governing hours of work and overtime are equally applicable to salaried employees as to any other employee. There is nothing submitted in this appeal which would indicate otherwise. I conclude that the determination is correct.

**ORDER**

I order, under Section 115 of the *Act*, that the Determination is confirmed.

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