

**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 -

Timothy R. Leardo  
("Leardo")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Cindy J. Lombard

**FILE NO.:** 1999/333

**DATE OF HEARING:** August 23, 1999

**DATE OF DECISION:** September 14, 1999

**DECISION**

**APPEARANCES**

Timothy Leardo on behalf of himself.

David Betts, Gerry Betts and Kathy Larsson on behalf of Betts Electric Ltd.

**OVERVIEW**

This is an appeal by the employee, Timothy Leardo (“Leardo”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) of a Determination of the Director of Employment Standards (the “Director”) issued on May 7, 1999. In that determination, the Director denied the Appellant’s claim for overtime on the basis that he was employed by the employer as a manager and thus the employer was exempt from paying him overtime. I heard oral evidence from Leardo, David Betts (“Betts, Sr.”), major shareholder of Betts Electric Ltd., Gerry Betts (“Betts, Jr.”), President of Betts Electric Ltd., and Kathy Larsson, the company’s secretary.

**ISSUES TO BE DECIDED**

Whether Leardo was a manager during the period for which he claims overtime, namely, June 15, 1997, to December 3, 1997.

**ANALYSIS**

Section 40 of the *Act* provides that all employees are entitled to overtime pay after a certain number of hours worked in a day or week.

The *Act* defines manager to mean:

- “a) a person whose primary employment duties consist of supervising and directing other employees, or
- b) a person employed in an executive capacity”

Elements to be examined in determining whether Leardo’s duties consist primarily of supervising and directing other employees are outlined in *The Director of Employment Standards BC EST #D479/97* (a reconsideration of *Amelia Street Bistro BC EST #D170/97*) and include:

1. The amount of time spent supervising and directing other employees;
2. The nature of the person’s non-supervising employment duties;

3. The degree to which the person exercises the kind of power and authority typical of a manager;
4. To what element of supervision the power applies;
5. The reason for the employment;
6. The nature and size of the business.

That decision also refers to objective factors, which would indicate that, an employee is a manager, namely:

1. The power of independent action, autonomy, and direction;
2. The authority to make final decisions, not simply recommendations, relating to supervising and directing employees or to the conduct of the business;
3. Making final judgments about such matters as hiring, firing, authorizing overtime, time-off or leaves of absence, calling employees into work or laying them off, altering work processes, establish or alter work schedules, and training the employees and for that person's job description included supervising and directing employees.

The evidence before the Tribunal does not support a finding that the Director erred in his determination that Leardo was a manager during the relevant period taking the above factors into account and therefore he is not entitled to overtime.

Some of the evidence relied on is as follows:

1. Leardo became a 9% owner of Betts Electric Ltd. in April, 1993, when he purchased shares;
2. During the whole of the relevant period which fell during the Kemess Project, Leardo was the person responsible for all aspects of the project including:
  - a) he made the original contact with Kemess to bid on the job, he met with the owners of Kemess several times to secure the contract;
  - b) Leardo alone ran all aspects of the job and was the sole person in authority on the site during the several months that it took to complete the project. Betts, Sr., visited the site twice simply to offer any advice that Leardo might find helpful as Leardo had never been in charge of such a large job previously. Betts, Jr., visited the site on just one occasion.
  - c) Ninety percent of the material ordered for the project was ordered for Leardo;
  - d) Leardo was solely responsible for deciding how many men were required to work at the project, and their hours including overtime;
  - e) Leardo signed all progress payments on behalf of Betts (see Exhibits 2, 3 and 4) totaling several hundred thousand dollars on his own authority.
  - f) Leardo signed the substantial completion memo on behalf of Betts for the Kemess project (see Exhibit 1)

3. As part owner of Betts Electric Ltd. and manager of the project, Leardo had access to confidential documentation such as work tickets and billings that a simple foreman would not.
4. Leardo decided as to when he worked, he was not answerable to anyone as to when and how much time off he took.

Having considered all the circumstances, I am not persuaded that the Appeal can succeed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the determination in this matter dated May 7, 1999, be confirmed.

**Cindy J. Lombard**  
**Adjudicator**  
**Employment Standards Tribunal**