

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 -

Bistro! Bistro! Restaurants Ltd.
("Bistro" or the "Employer")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE NO.: 98/413

DECISION DATE: September 1, 1998

DECISION

APPEARANCES/SUBMISSIONS

Mr. Zbigniew Ciura	on behalf of Bistro
Mr. Thien Thanh Phan	on behalf of himself
Mr. Hung Tam Ta	on behalf of himself
Mr. Diem Tam Tg	on behalf of himself
Mr. Lee Wood	on behalf of himself
Ms. Cheryl Alexander	on behalf of herself
Ms. Susanne de Diego	on behalf of the Director

OVERVIEW

This is an appeal by the Employer pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination of the Director of Employment Standards (the “Director”) issued on June 15, 1998 which found the Employer liable for a total of \$19,555.39 on account of a number of contraventions of the *Act*, including, compensation for length of service, overtime, statutory holiday pay with respect to some 20 former employees.

FACTS AND ANALYSIS

In my view, the appeal of this Determination turns on whether the delegate provided sufficient reasons for her decision. The Determination stated:

“Allegations

Several former employees have filed complaints alleging outstanding wages under the *Act* for violations under Sections 34(2)(a), 36(1)(b), 40(1)(a), 40(2)(b), 46(1)(a) and (b), 46(2), 58(1)(a) and (3), 63(1) and (2)(a)(b).The employees allege they were permanently laid off without notice or compensation for length of service.

Findings of Facts

I have completed my investigation into these allegations.

The investigation revealed that the restaurant's last day of operation was October 4, 1997 following which the restaurant was placed in receivership. I have been able to secure detailed records from the employer of the hours worked by the employees and the remuneration paid.

Conclusion

I have determined that the complainants are entitled to the amounts set out in the attached calculation sheets”

The Employer now takes issue with the Determination and the calculation of the amounts owing. Section 81(1)(a) of the Act requires the Director to give reasons for the Determination to any person named in it. This Determination dealt with the approximately 20 former employees. While the Determination refers to an “investigation”, it does not provide any particulars of the results of that process. The Determination does not set out any particulars of the alleged contraventions. There are no particulars regarding the individual employees, except as may be inferred from the calculation sheet: hourly rates, length of service etc. In short, there is no factual basis for the Determination. There is no analysis of the law or the facts. In order to allow a party to exercise the right of appeal provided in the statute, the Determination must state the factual and legal basis for the conclusions reached in it. It is not adequate to simply state that a person, in this case the Employer, has contravened a number of specific provision of the *Act* or *Regulation*.

ORDER

Pursuant to Section 115 of the Act, I refer the Determination in this matter, dated June 15, 1998 back to the Director.

Ib Skov Petersen
Adjudicator
Employment Standards Tribunal