

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 -

Glen Lake Inn Ltd.
("Glen Lake")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Niki Buchan

FILE NO.: 97/378

DATE OF HEARING: August 29, 1997

DATE OF DECISION: September 17, 1997

DECISION

APPEARANCES

Michelle Delesalle	For the Glen Lake Inn Ltd.
Andrea Legett	For Herself
Louella Goodwin	For Herself
Marci Wickens	For Herself
Tracy Wondga	For Herself
Cindy Zboyovsky	For Herself
Gerry Omstead	For the Director

OVERVIEW

This is an appeal brought by Michelle Delesalle (“Delesalle”) on behalf of Glen Lake Inn Ltd. (“Glen Lake”) against a Determination, dated April 22, 1997, issued by the delegate of the Director of Employment Standards (“The Director”). The Determination found that Glen Lake contravened both Sections 21 and 25 of the *Employment Standards Act* (the “Act”). It ordered Glen Lake to pay \$4,662.75 to 13 employees in various amounts as listed in the Determination.

The complaint, lodged by an employee on a confidential basis, alleges that Glen Lake failed to pay wages as per the the *Act*. In particular, the employee alleged that the company required employees to wear special clothing at work and charged the employees a portion of the cost of that clothing. It also alleges that Glen Lake did not provide cleaning and maintenance for that clothing.

Glen Lake acknowledges that employees were incorrectly charged for a portion of the cost of special clothing that they were required to wear and that it did not provide or pay for cleaning and maintenance of the clothing. As soon as it was discovered that it was in contravention of the *Act*, it agreed to reimburse employees for that portion of the cost of the two shirts it required them to have.

ISSUES TO BE DECIDED

1. Whether Glen Lake is responsible to pay for more than the two shirts maximum it required each employee to have?
2. Whether the establishment of a rate of \$1.55 per shirt for cleaning cost is a fair rate?
3. Whether Glen Lake is responsible to pay each of the employees listed the cost of \$1.55 per shift times 5 shifts per week times 43 weeks (May 5, 1996 to March 1, 1997) or only for those shifts actually worked by an employee?

4. Whether Glen Lake is responsible to pay cleaning and maintenance costs to employees for shifts when they did not wear the special clothing?
5. Whether Glen Lake is responsible for cleaning cost during the 10 week period (August 2, 1996 to October 18, 1996) when the restaurant was not operated by Glen Lake?

FACTS

- Glen Lake operates a property composed of a hotel, restaurant, pub and beer and wine store.
- Of the 13 employees 2 worked in the Pub, 1 in the hotel, 5 in the beer and wine store and 4 worked in the restaurant. One employee worked in the hotel until August 4, 1996 and terminated her employment on that date. She was rehired on October 18, 1996 to work in the restaurant.
- Approximately May 5, 1996, employees were required to wear special shirts during their work. The shirts exhibited the Glen Lake Inn Ltd. logo. This requirement was not strictly enforced by the employer. Of the three employees who gave sworn evidence at the hearing, the amount of time they wore their shirts varied from 5% to 90%. The four employees who worked in the Beer and Wine Store did not comply with the requirement to wear the shirts until February 21, 1997 when Delesalle issued a memo that they must comply with the requirement.
- Employees were required to purchase a maximum of two shirts, if required, at a cost of 1/3 of the actual cost. Three employees of their own volition purchased more than the required two shirts and were awarded reimbursement for these extra shirts by the Determination. Louella Goodwin was charged for an extra shirt she was required to give to another employee.
- There was no agreement between Glen Lake and the employees on how much money they would be reimbursed if they cleaned and maintained their own items of clothing.
- The Determination sets out how the cost of \$1.55 for laundering cost came about:

“To decide on the value of the cleaning and maintaining of the clothing in good repair I reviewed a number of issues. I firstly looked at an employee who would go home after the work day and who laundered the item of clothing. Taking into consideration that the employee was paid at a rate of \$7.00 per hour to wash and iron the clothing it would take at a minimum approximately 15 minutes to complete that function. There would also be the use of the equipment, washer, dryer and iron and soap. Broken down the cost would be approximately \$1.75. I also contacted a number of laundry operations such as Imperial Hallmark, Fairfield Cleaners, Nu-Way Cleaners Ltd. and Pabtic Cleaners. The costs per shirt

ranged from \$1.75 plus taxes to \$2.10 plus taxes. I also contacted Canadian Linen Supplies who indicated that their costs were \$1.55 per shirt which would include the pickup and delivery of the clothing.”

- The Determination was issued prior to a review of the payroll records. There was a misunderstanding between the labour consultant for Glen Lake and the Director resulting in a failure to provide those records. The labour consultant believed that the request for records had been withdrawn.
- Delesalle met with the Director on May 5, 1996 and provided the information required. This included the number of shifts worked by each of the 13 employees during the period Glen Lake operated the restaurant.
- Delesalle’s appeal submissions set out the number of shifts worked by each employee and the time periods for those shifts starting May 5, 1996.
- Glen Lake leased the restaurant to Belly Foods Ltd. on August 1, 1996. The lease arrangements were unsatisfactory and the lease was cancelled and the operation of the restaurant returned to Glen Lake on October 18, 1996.
- Records of employment indicate that the following employees were terminated by Glen Lake at the time of the lease by Belly Foods Ltd:

Joan Gallagher	August 4, 1996
Andrea Peters	August 1, 1996
Cindy Zboyousky	August 1, 1996
Ruth Harding	August 1, 1996
Louella Goodwin	July 30, 1996

They were all hired by Belly Foods Ltd. to work in the restaurant.

- When Glen Lake resumed operation of the restaurant on October 18, 1996 these five employees were rehired on that date except Andrea Peters who was rehired on October 21, 1996.

ANALYSIS

The Tribunal normally does not permit new evidence to be brought forward which was available and was not produced at the time of the investigation. After hearing from the appellant and the Director, I am satisfied that there was a genuine misunderstanding that the payroll records requested had been withdrawn or were no longer required. When Delesalle finally met with the Director on May 5, 1997, in the hope of resolving the matter, an agreement could not be reached on the issue of costs and the time limitation for appeal was running out. The Director recognized that there was a problem with the days

worked by employees. Delesalle was advised that it was too late to revise the Determination and it was suggested that she should launch the appeal.

In this instance, it would be unfair to Glen Lake for the monetary award to stand as set out in the Determination allowing a number of employees to receive a windfall of wages arising from a payment for cleaning costs they did not incur because they did not work five shifts per week for 43 weeks.

Issue 1

Glen Lake agreed to reimburse employees for the portion they had paid for their shirts once it was informed that this practice contravened the *Act*. The Determination sets out the amount each employee paid for clothing. Delesalle argues that Glen Lake should only be responsible to pay for a maximum of two shirts which it required employees to have. I find that Glen Lake required a maximum of two shirts and should not be required to pay for extra shirts ordered by three employees for their own convenience. Therefore, Andy Peters and Mary Ellen Fletcher should only be reimbursed \$19.50 each. Louella Goodwin should be reimbursed the full \$48.50 she paid because she was required to give her third shirt to another employee. All other reimbursements are to be made in amounts as set out in the Determination.

Issue 2

The Determination set \$1.55 as the amount to be paid per shift for laundry cleaning and maintenance. Since there was no agreement in place between Glen Lake and the employees the Director had to determine the amount to be paid to them. The Determination describes how the amount was determined.

Delesalle presented unsworn evidence obtained thorough telephone calls to other companies indicating that 5 cents per hour is the average in the industry. She argues that these employees do their shirts with their normal wash. Some employees iron their shirts and others do not. She indicates that her cost for laundering the clothing for cooks done by Canadian Linen is less than \$1.55 per shift. She proposes that 5 cents per hour is adequate. She further argues that it is not fair to the industry or employers across the province to have the Tribunal set \$1.55 per shift as the rate to be paid for cleaning costs of the shirts. She says she should be allowed to negotiate a rate with the employees.

The Director notes that you have a problem when you deal with laundry costs as an amount based on hours worked - at 5 cents per hour, an 8 hour shift will result in 40 cents per shift and a 4 hour shift only 20 cents. Both employees still require the clothing. He asks why the amount should be different.

I agree with Delesalle that the Tribunal should not set a rate as the laundry cleaning cost. The Director made a reasonable attempt to determine a fair rate for laundering the required clothing and arrived at \$1.55 per shift. The *Act* provides for negotiation of the cost of cleaning and maintaining special clothing. It is the responsibility of employers to

be aware of employment legislation. Glen Lake did not make an agreement with its employees thus it is now required to pay the rate determined by the Director for the time in question. This does not prevent Glen Lake from negotiating a different rate in the future. I confirm that \$1.55 per shift is the rate to be used in calculating the amount to be paid to employees as the cost of cleaning and maintaining their special clothing for the time period covered by the Determination.

Issue 3

The Determination ordered each of the 13 employees be compensated \$1.55 per shift times 5 shifts per week times 43 weeks. This order would not have been issued if the information had been available as to how many shifts the employees actually worked. Since I am satisfied there was a genuine misunderstanding, I accept the new evidence presented by Glen Lake in submissions to the Tribunal outlining shifts worked by each employee. The calculations should be revised by the Director to reflect only payment for the shifts actually worked by an employee.

Issue 4

Glen Lake argues that it should not be required to pay employees if they did not wear the shirts as instructed. While there was some evidence relating to a percentage of time certain employees wore their special clothing, there was no evidence available with respect to others. All employees were issued instructions to wear the clothing but this employer made little effort to enforce this requirement. There was no satisfactory evidence from Glen Lake upon which to base a decision to relieve it from payment for shifts when the clothing was not worn.

Issue 5

Glen Lake argues that it should not be held responsible for payment of cleaning costs for the 10 weeks the restaurant was leased to Belly Foods Ltd. Evidence provided indicate that five employees were terminated and were not under the control or management of Glen Lake from approximately August 1, 1996 to October 18, 1996. Even though employees continued to wear the logo shirts at the restaurant, Delesalle gave sworn evidence that she did not instruct these employees to wear the clothing during that time. It is unreasonable then to require Glen Lake to pay cleaning costs to persons who were not employees during that period of time. The Director should consider this time period in revising the amount to be paid to these employees.

As well as the issues above Delesalle argues that the cost of wearing a uniform is not a cost of doing business. This argument is invalid. Section 23(3) specifically deems money received or deducted by an employer for providing, cleaning and maintaining special clothing to be wages owing and the *Act* applies to their recovery. If these monies are wages then they are a cost of doing business.

ORDER

In summary, I order under Section 115 of the *Act*, the Determination dated April 22, 1997 be confirmed with respect to the \$1.55 rate used to calculate the cleaning and maintenance costs in this case.

I further order that the Determination be varied to reflect

1. that Andy Peters and Mary Ellen Fletcher are to be reimbursed for clothing in the amount of \$19.50 each rather than the amounts listed in the Determination, and
2. that the Determination be varied to reflect payment for cleaning and maintenance costs only for shifts actually worked by each employee.

I further order that this matter be referred back to the Director to revise the payment required by Glen Lake to reflect the orders made and oversee the enforcement of them.

**Niki Buchan
Adjudicator
Employment Standards Tribunal**