

**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 -

Village Pandora Holdings Ltd.  
(the "Village")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** David B. Stevenson

**FILE No.:** 2000/531

**DATE OF HEARING:** November 23, 2000

**DATE OF DECISION:** December 13, 2000

**DECISION**

**APPEARANCES:**

on behalf of Village Pandora Holdings Ltd.	Fred J. Punko
	Dimitrios Nikolitsos
	Tassos Stratikopoulos
on behalf of Jacqueline Schiller	in person
on behalf of Gregory Goodman	in person
on behalf of Jaswant Bining	in person

**OVERVIEW**

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Village Pandora Holdings Ltd. (the “Village”) of a Determination which was issued on July 12, 2000 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that the Village had contravened Part 3, Section 18, Part 7, Section 58 and Part 8, Section 63 of the *Act* in respect of the employment of several employees, four of whom, Jacqueline Schiller (“Schiller”), Gregory Goodman (“Goodman”), Jaswant Bining (“Bining”) and Brenda Raphael (“Raphael”), had filed complaints with the Director. During the investigation, the Director also concluded that Thais Ljunggren, Veronica Saul, Michelle Rowe, Teresa Schooley and Linda Maud were also owed wages. The Director ordered the Village to cease contravening and to comply with the *Act* and to pay an amount of \$9,569.81.

While the Determination reached several conclusions in making the Determination, the Village has appealed only the conclusions that Schiller was owed wages for attending meetings and for overtime pay, that Bining was continuously employed by the Village from July 11, 1991 until March 23, 2000 and that wages were owed to employees who did not file complaints with the Director.

**ISSUE**

The issue in this case is whether the Village has met the burden of showing the Director erred in respect of the above conclusions.

**THE FACTS**

I intend only to deal with the facts as they relate to the issue and to the challenge to the conclusions of fact. On the question of whether Schiller was owed wages for attending meetings and for overtime, Schiller claimed that she attended a minimum of eight meetings a year during

the last two years of her employment and that each meeting lasted for approximately two hours. The Director accepted that claim. On that matter, the Determination stated:

. . . any activity such as training and attending meetings for the purposes of the Employer's business or for the benefit of the Employer is considered to be **work** done by an employee and for which **wages** are payable. Given that there is no evidence to suggest otherwise, it is my decision that the Complainant attended at least 16 meetings (32 hours) in the last two years of her employment and is therefore entitled to wages for those hours.

Tassos Stratikopoulos, one of the owners of the Village, gave evidence. He acknowledged that there were meetings called, but had no recollection of their frequency or duration.

On the question of whether Schiller had worked overtime hours, the Determination noted:

The Complainant claimed that she worked over 8 hours in some of the days during the last 2 years of her employment. However, she was always paid straight or regular wages for all hours worked. She submitted copies of some of the time sheets as well as pay stubs to prove her claim. The time sheets showed that she worked [a total of 27 hours overtime over the last two years].

There is no indication of overtime pay on the pay stubs submitted by the complainant.

The time sheets provided by Schiller during the investigation were photocopies of the daily hours of work as recorded by the employees in a book kept at the restaurant for that purpose. The photocopies were made prior to the closure of the Village. Apparently, subsequent to the closure of the Village that record disappeared. The process for recording time was for the hours recorded by the employees to be transposed to another set of books by the accountants for the Village. Those books, covering approximately two years, were produced at the hearing. They bore little resemblance to the photocopies of the employees' recorded hours that were given by Schiller to the Director during the investigation. The records produced showed no overtime was ever worked at the Village. I will say only two things about how I view those records. First, it defies common sense to suggest that a restaurant could operate over a period of two years without a single minute of overtime ever being worked. Second, Mr. Stratikopoulos in his evidence said that there were times that employees worked more than eight hours a day, but that is not shown anywhere.

In the appeal concerning the conclusion concerning the claim of Bining, the Village contended that Bining quit her employment with the Village on February 14, 1994, in order to travel overseas, and was rehired again on May 3, 1994. In her evidence before me, Bining does not dispute that she was gone from the Village during the identified period, but says before she went, she asked Mr. Stratikopoulos if she would still have her job when she returned and he had said that provided she found a replacement to look after her job while she was gone, she could come back. Bining found a replacement, Samarjit Bansal, who was let go when Bining returned from her travels. No Record of Employment was ever issued indicating her employment ended.

Mr. Stratikopoulos testified that he gave two employees, Teresa Schooley and Linda Maud, approximately \$600.00 in cash. He was vague about when he gave the employees that money, the circumstances under which it was paid and the actual amounts. Neither of these two individuals attended the hearing or responded to the appeal, which did assert that several employees, including these two employees, had been paid cash monies.

## **ARGUMENT AND ANALYSIS**

I am not persuaded by anything in this appeal that the Determination is wrong in its conclusions concerning Schiller, Bining and all other employees except Teresa Schooley and Linda Maud. The burden on the Village in challenging the findings of fact made by in the Determination is to show that the conclusions were either clearly wrong, manifestly unfair or without any rational basis (see *Re Mykonos Taverna (c.o.b. Achillion Restaurant)*, BC EST #D576/98). They have failed to do that.

In respect of the claim by Schiller for wages for attending meetings, the Village asserted in its appeal that “no meetings were held”. That is not supported by the evidence of Mr. Stratikopoulos. As well, Mr. Stratikopoulos was unable to dispute the suggestion made to him by Schiller that such meetings took place about every second month, but not on a regular basis. There is a factual foundation supporting the conclusion made by the Director. On the question of overtime, I do not accept the assertion that no overtime was ever worked by Schiller and I do not accept the employer’s records are an accurate record of the actual daily hours worked by Schiller, or for that matter any other employee.

The appeal, as it relates to the above two matters, is dismissed.

I accept the evidence of Mr. Stratikopoulos that he paid cash to two employees, Teresa Schooley and Linda Maud. He was, however, vague on how much cash was paid to them, when, and specifically what it was for. Section 2 of the *Act*, however, directs that the *Act* should be applied fairly. In the circumstances, it would be unfair to the Village, if the employees have received a cash payment for some of their wages, to allow them to retain the benefit of the Determination. Neither employee has participated in the process nor, unlike some other employees, have they given any indication that the assertion made by the Village in its appeal is wrong. I do not, however, intend to simply vary the Determination in respect of the conclusions reached by the Director on their entitlement under the *Act*, which is one of the options I have under section 115 of the *Act*. There is insufficient material to allow any firm conclusion about the amount each may have received in cash from Mr. Stratikopoulos, or even if such amounts were paid as part of wages owing. The Determination respecting those two employees will be referred back to the Director with a request to communicate with the two employees to determine whether they received a cash payment of wages from Mr. Stratikopoulos and, if so, how much that was. The Director has the jurisdiction under Section 86 of the *Act* to vary the Determination if the circumstances warrant it.

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination, dated July 12, 2000 be referred back to the Director to consider the calculations made in respect of the wages owed to Teresa Schooley and Linda Maud. In all other respects, the Determination is confirmed.

***David B. Stevenson***  

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**