

An Application for Reconsideration

- by -

Glacier Park Lodge Ltd.  
("GPL")

- of a Decision issued by -

The Employment Standards Tribunal  
(the "Tribunal")

pursuant to Section 116 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

**TRIBUNAL MEMBER:** Shafik Bhalloo

**FILE No.:** 2009A/134

**DATE OF DECISION:** December 1, 2009

## DECISION

### SUBMISSIONS

Aaron Fu	on behalf of Glacier Park Lodge Ltd.
Concepcion R. Mondragon	on her own behalf
Aurora C. Chavez	on her own behalf
Cristeta S. Vicmudo	on her own behalf
Maricar B. Medrano	on her own behalf
Ed Wall	on behalf of the Director of Employment Standards

### OVERVIEW

1. This matter initially came before a member of the Tribunal (the “Member”) by way of an appeal filed by the employer, Glacier Park Lodge Ltd. (“GPL”), pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) in which GPL challenged a determination of a delegate (the “Delegate”) of the Director of Employment Standards (the “Director”) dated February 18, 2009 (the “Determination”). In that Determination, the Delegate decided that GPL had contravened Part 3, sections 18 and 21 of the *Act* and ordered GPL to pay Aurora C. Chavez (“Ms. Chavez”), Maricar B. Medrano (“Ms. Medrano”), Concepcion R. Mondragon (“Ms. Mondragon”) and Cristeta S. Vicmudo (“Ms. Vicmudo”) (collectively “the Complainants”) a total of \$12,339.25, an amount which included wages and interest payable under section 88 of the *Act*. The Delegate also imposed two administrative penalties of \$500.00 each on GPL pursuant to section 29(1) of the *Employment Standards Regulation* (the “*Regulation*”) in contravention of sections 18 of the *Act* and 46 of the *Regulation*.
2. In his appeal decision (the “Original Decision”) (BC EST #D059/09) made on June 10, 2009, the Member considered the submissions of GPL on both grounds of appeal identified in the Appeal Form - error of law and new evidence - but found no support to cancel or vary the Determination on these grounds. With respect to GPL’s submissions alleging errors of fact, the Member noted that errors of fact did not constitute a permissible ground of appeal under section 112 of the *Act* unless such errors amount to an error of law which was not the case in GPL’s appeal. As a result, the Member dismissed GPL’s appeal with one variation in the Determination based on the submissions of the Director, GPL and Ms. Vicmudo. In particular, the Member noted that the Director, in his submissions, pointed out that the Delegate erred in his initial conclusion regarding wages owing to Ms. Vicmudo. Apparently Ms. Vicmudo had not been paid any wages for her period of employment with GPL, contrary to the assumption of the Delegate. In the circumstances, the Director submitted that Ms. Vicmudo was owed additional wages in the amount of \$1,569.00. Both GPL and Ms. Vicmudo, in their appeal submissions, agreed with the Director’s submission. As a result, the Member ordered in the Original Decision that the Determination be varied to account for the additional amount of \$1,569.00 owed to Ms. Vicmudo for a total award against GPL in respect of all the Complainants of \$14,908.25, together with any accrued interest under section 88 of the *Act*.
3. GPL subsequently applied for a reconsideration of the Original Decision under section 116 of the *Act* on the basis that the Director and the Member failed to consider that the employment contracts between GPL and

the Complainants required the latter to pay GPL \$390.00 per month for room and board where they were provided room and board. In particular, GPL argued that in both the Determination and the Original Decision no deductions were made from the amounts awarded to Ms. Mondragon, Ms. Medrano and Ms. Chavez for room and board provided to them in the month of May 2008. In the case of Ms. Mondragon and Ms. Chavez, GPL submitted that a deduction of \$338.00 should have been made for room and board and in the case of Ms. Medrano, a deduction of \$182.00 should have been made.

4. Having considered the submissions of all of the parties in the reconsideration application, on September 10, 2009, I varied the Original Decision to allow the deductions of the room and board charges sought by GPL in the amounts previously indicated from the individual awards made to Ms. Mondragon, Ms. Medrano and Ms. Chavez and confirmed the Original Decision in all other respects. However, in the interest of attaining greater clarity for the parties concerned, I referred the matter back to the Director with specific instructions to recalculate the net awards for each complainant, after making the appropriate deductions for room and board charges and interest adjustments.
5. The Delegate recalculated the amount owing to the employees concerned in the Referral Back Report dated October 8, 2009 (the "Report"), which the Tribunal forwarded to all concerned parties for consideration and response. With the exception of GPL, none of the Complainants objected to the calculations in the Report. GPL, however, through its principal Mr. Aaron Fu, pointed out an error in the Delegate's calculations pertaining to Ms. Vicmudo stating:

The amount \$1,755.39 plus \$1,559.00 is equal to \$3,314.39 not \$3,371.41. So, there may be also some changes in the column 'new interest calculation and subsequent interest'.

6. In response to Mr. Fu's submission, Ms. Vicmudo agrees with his calculations.
7. As a result, the Delegate issued his revised Report on November 17, 2009, (the "Revised Report") that corrected the error pointed out by Mr. Fu in the calculations pertaining to Ms. Vicmudo as well as a further error he made in the Report previously in crediting Ms. Vicmudo \$1,559.00 for additional outstanding wages owed to her as opposed to the \$1,569.00 ordered in the Original Decision. The Revised Report was sent to all the parties concerned and no one is taking any issue with the new calculations in it.

## ORDER

8. I order, pursuant to section 116 of the *Act*, that the Delegate's calculations in the Revised Report be confirmed in the total amount of \$13,179.57. I note that Glacier Park Lodge Ltd. has made a payment of \$12,423.43 to the Employment Standards Branch in advance of my decision, leaving the balance owing at \$756.14.

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**Shafik Bhalloo**  
**Member**  
**Employment Standards Tribunal**