Are Supervisory Employees Entitled to Overtime Pay?



Employees are entitled to overtime pay and other rights under employment standards laws. **The catch:** They don't qualify for these entitlements if they're a "manager." So, you need to understand which of your employees is considered a "manager" to comply with employment standards laws. Unfortunately, it's not always easy to tell who is and isn't a manager, especially if the employee has supervisor responsibilities. In everyday parlance, employees are usually called "managers" when they supervise other employees. But the legal definition of "manager" is more complex. Supervisory duties don't always make an employee a manager for purposes of employment standards law. Here are 2 cases that shed light on what **does** make an employee a "manager."

Employee IS a "Manager"

The takeaway from this case is that an employee need not have a supervisory title to be deemed a supervisor. The determining factor is the employee's actual role and duties.

Situation

A regional airline fired its station manager at what was then known as Dorval International Airport in Québec. She sued for wrongful dismissal. The *Canada Labour Code* gives "employees" the right to sue for wrongful dismissal. But managers don't have the same right under the law. The arbitrator ruled that the station manager was a "manager" under the *Code*. And because the *Code* applied, the arbitrator ruled that he didn't have jurisdiction, that is, legal authority, to decide the case. The station manager claimed she was really an "employee" and appealed the ruling.

Ruling

The federal appeals court ruled that the station manager was a "manager" and dismissed the complaint.

Reasoning

It's the nature of the employee's work—rather than her title or place in the management chain—that determines whether she's actually a manager under the law, the

court explained. The determining factor is whether the employee's primary responsibility is to manage. Here, the station manager was the airline's senior representative in the airport with responsibility for local operations and customer service. She was in charge of 7 employees. Her responsibilities were managerial in nature and included personnel management, work scheduling, preparation of budgets, interaction with local airport authorities, maintenance of ground equipment, and preparing monthly reports. Even though her authority wasn't absolute—she reported to a regional manager—she had sufficient autonomy and discretion to be considered a manager, the court concluded.

Leontsini v. Business Express Inc., 1997 CanLII 5981 (FC).

Employee Is NOT a "Manager"

Lack of supervisory authority was the deciding factor in this case with a contrasting result to the *Leontsini* ruling.

Situation

An employee filed a complaint with the Employment Standards Tribunal against the construction contractor claiming that he was a non-management employee and therefore entitled to certain benefits, including overtime and statutory holiday pay under the British Columbia *Employment Standards Act*. The Tribunal agreed and awarded him the benefits. The contractor appealed, claiming that the employee was actually a manager.

Ruling

The British Columbia Supreme Court ruled that the employee wasn't a manager and was thus entitled to benefits under the ESA.

Reasoning

The definition of "manager," according to the court, is a person whose principal responsibility is supervising and/or directing human or other resources. Here, although the employee had some very minor supervisory duties, he didn't have the responsibility that would make him a manager under the Employment Standards Act. The employee worked at various construction sites, checking on whether work was done and providing what was needed to keep the work going. The only policies he enforced related to wearing hardhats and attending the weekly safety meeting. He monitored the work of 3 to 5 employees but had no authority to hire, fire, or discipline them. And he had no authority to set or change work schedules, call employees into work, or authorize overtime, vacation, or leaves of absence. The court concluded that these factors demonstrated that the employee was simply an employee and not a manager under the ESA.

J.P. Metal Masters 2000 v. Director of Employment Standards, 2006 BCSC 928 (CanLII).