

**Case No. 352/08/ESC**

**File No. 96135**

**IN THE MATTER OF: THE EMPLOYMENT STANDARDS CODE**

**BETWEEN:**

**64940 MANITOBA LTD.  
trading as THE PATIO CAFE,**

**Employer,**

**- and -**

**Patrick Martin Clare,**

**Employee.**

**BEFORE:**

**C. S. Robinson, Vice-Chairperson**

**J. Malanowich, Board Member**

**R. Glass, Board Member**

**SUBSTANTIVE ORDER**

**WHEREAS:**

1. On April 22, 2008, pursuant to Section 96(1) of *The Employment Standards Code*, the Director of the Employment Standards Division of the Department of Labour and Immigration, ordered that the amount of Four Hundred Forty Four Dollars and Forty Two Cents (\$444.42) being wages owing by the Employer to the Employee(s), be paid to the Director of the Employment Standards Division of the Department of Labour and Immigration by the Employer and further required the payment of the administrative fee in the amount of One Hundred Dollars (\$100.00) for a total owing of Five Hundred Forty Four Dollars and Forty Two Cents (\$544.42).
2. The Employer having disputed the payment of the above-mentioned amount, the Director of the Division, pursuant to Section 110 of the *Code*, referred the matter to the Board.
3. On March 5 and March 6, 2009, the Board conducted a hearing at which time both parties appeared before the Board and presented evidence and argument. The Employer, 64940 Manitoba Ltd. trading as The Patio Cafe, was represented by Counsel. Further all parties agreed that Case No. 352/08/ESC which pertains to a claim filed by Patrick Martin Clare, would be heard together with Case Nos. 350/08/ESC and 351/08/ESC, dealing with claims filed by Randy Glays and Janice Glays respectively.

4. On March 5, 2009, at the commencement of the hearing, after hearing opening comments from all parties, the Board determined that the hearing be bifurcated such that the true Employer be determined firstly by the Board and then any issue respecting quantum be determined later, if necessary. All parties in Case Nos. 350, 351 and 352/08/ESC, agreed that the cases proceed in this manner.
5. The Board, following consideration of material filed, evidence and argument presented, is satisfied:
  - a) that 64940 Manitoba Ltd., trading as The Patio Cafe is not the Employer. As such, an Employer/Employee relationship did not exist between Patrick Martin Clare and 64940 Manitoba Ltd., trading as The Patio Cafe;
  - b) that as a consequence of the foregoing findings, Patrick Martin Clare's claim for wages, vacation wages, general holiday wages and wages in lieu of notice against 64940 Manitoba Ltd., trading as The Patio Cafe is dismissed.

**T H E R E F O R E**

The Manitoba Labour Board **HEREBY DISMISSES** the claim of Patrick Martin Clare.

**DATED** at WINNIPEG, Manitoba, this 17<sup>th</sup> day of **June, 2009**, and signed on behalf of the Manitoba Labour Board by:

***"C.S. Robinson"***

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C. S. Robinson, Vice-Chairperson

***"J. Malanowich"***

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J. Malanowich, Board Member

***"R. Glass"***

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R. Glass, Board Member

### NOTES

1. **Appeal of board order re unpaid wages**  
**130(1)** A person who is a party to a final order of the board made under this Code in respect of a matter referred to the board under section 110 may appeal the order to The Court of Appeal.
  
2. **Appeal of the Board Decision or Order to Court of Appeal**
  - a. Leave to appeal required  
**130(2)** An appeal may be taken only on a question of law or jurisdiction and by leave of a judge of The Court of Appeal.
  
  - b. Time for application for leave to appeal  
**130(3)** An application for leave to appeal shall be made within 30 days after the day the order is made or within such further time as a judge may allow.
  
3. **Board and director entitled to be heard**  
**131** The board and the director are each entitled to be heard, by counsel or otherwise, on the argument of an application for leave to appeal and on an appeal.
  
4. **Applicant to file proof of payment to the director**  
**130(4)** If a person that files an application for leave is not an employee and is required, under the order that is the subject of the application, to pay money to the director, the person shall file with the application evidence that he or she has complied with subsection 125(4).
  
5. Evidence of compliance with an Order of an Acknowledgment of Receipt from the Employment Standards Division indicating that the amount stated in the Order has been deposited in the "*Province of Manitoba Wages Trust Account.*" *The Employment Standards Division will only accept certified cheques, money orders or cash. Personal cheques will not be accepted unless certified. Please make cheques, etc. payable to "The Province of Manitoba Wages Trust Account."*

### REASONS FOR DECISION

It is the policy of the Manitoba Labour Board that where a party to the proceedings is adversely affected by an Order or by a decision of the Board, within ten (10) calendar days of the date on which the Board's Order or decision was signed that party may request the Board in writing to furnish written reasons for its Order or decision. The Board then may consider such request for reasons for its Order or decision and shall notify the requesting party as to whether reasons will be provided.

**Case No. 352/08/ESC**  
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**Page 4**