

Manitoba Labour Board

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Case No. 350/08/ESC

File No. 96060

IN THE MATTER OF: THE EMPLOYMENT STANDARDS CODE

BETWEEN:

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

Employer,

- and -

R.G.,

Employee.

BEFORE:

C. S. Robinson, Vice-Chairperson

J. Malanowich, Board Member

R. Glass, Board Member

This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.

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 Eight Thousand Two Hundred Fifty Nine Dollars and Twenty Seven Cents (\$8,259.27) 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 Eight Hundred Twenty Five Dollars and Ninety Three Cents (\$825.93) for a total owing of Nine Thousand Eighty Five Dollars and Twenty Cents (\$9,085.20).
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, both parties being

represented by Counsel. Further, all parties agreed that Case No. 350/08/ESC which pertains to a claim filed by R.G., would be heard together with Case Nos. 351/08/ESC and 352/08/ESC, dealing with claims filed by J.G. and P.M.C. 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 R.G. and 64940 Manitoba Ltd., trading as The Patio Cafe;
 - b) that R.G. is not an “employee” as defined in the *Code*.
 - c) that as a consequence of the foregoing findings, R.G.’s claim for wages, overtime 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 R.G.

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

“Original signed by”

C. S. Robinson, Vice-Chairperson

“Original signed by”

J. Malanowich, Board Member

“Original signed by”

R. Glass, Board Member