

**Manitoba Labour Board**

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**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 -**

**P.M.C.,**

**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 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 P.M.C., would be heard together with Case Nos. 350/08/ESC and 351/08/ESC, dealing with claims filed by R.G. and J.G. 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 P.M.C. and 64940 Manitoba Ltd., trading as The Patio Cafe;
  - b) that as a consequence of the foregoing findings, P.M.C.'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 P.M.C.

**DATED** at **WINNIPEG**, Manitoba, this **17<sup>th</sup>** 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