

Appeals

- by -

Millennium Technology Inc.

- and by -

Sheng Wang

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

**TRIBUNAL MEMBER:** Carol Ann Hart

**FILE No.:** 2004A/202 and 2004A/210

**DATE OF DECISION:** March 7, 2005

## DECISION

### SUBMISSIONS

Sheng Wang	on his own behalf
Raymond Leung	on behalf of Millennium Technology Inc.
Wendy Jones	on behalf of the Director of Employment Standards

### OVERVIEW

This decision concerns appeals filed pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) by Sheng Wang (“Wang”) and Millennium Technology Inc. (“Millennium”). The appeals are based on a Determination issued on October 29th, 2004 (the “Determination”) by a delegate of the Director of Employment Standards (the “Director”).

In the Determination, the delegate of the Director determined that Millennium had contravened the *Act* in respect of the employment of Wang. Millennium was ordered to pay wages in the amount of \$15 325.10 plus interest in the amount of \$632.72. The delegate for the Director further ordered that Millennium pay an administrative penalty of \$500.00 for its contravention of the *Act*.

In its appeal, Millennium requested an oral hearing. The Tribunal has reviewed the material on file for both appeals, and has decided that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

#### *Wang’s Appeal*

The appeal is brought on the grounds that the delegate for the Director failed to observe the principles of natural justice in making the Determination. Wang seeks to have the Determination varied or changed.

#### *Millennium’s Appeal*

Millennium also appeals on the grounds that the delegate for the Director failed to observe the principles of natural justice in making the Determination, and seeks to have the Determination cancelled.

### ISSUE

The issue to be decided in this case is:

Did the delegate for the Director fail to observe the principles of natural justice in making the Determination?

## ARGUMENT

### Wang's Submissions

Wang submitted that, in addition to the amounts awarded, the delegate for the Director should have ordered that he was entitled to be paid for twenty five "time bank entitled days" at \$184.61 per day, for a total of \$4615.25. Wang contended that his Annual Leave Record which he had provided to the delegate for the Director clearly indicated that he was entitled to twenty five days of vacation. Wang maintained that because he could not take vacation at the time he was laid off, the vacation days should automatically become payable.

### Millennium's Submissions

In a letter dated 15 November 2004 attached to the Appeal Form completed for Millennium, Raymond Leung wrote that there had been "tremendous effort" made to try to settle this matter with Wang. Wang had refused to accept a reasonable settlement which had been proposed by the employer, and Millennium sought an order that the Determination be cancelled.

### The Director's Submissions

In a letter dated 15 December 2004 to Norma Edelman, Vice Chair, Employment Standards Tribunal, the delegate for the Director, Wendy Jones, wrote that this matter had been transferred to her. It previously been handled by another delegate for the Director, Murray Superle, who had retired from the Employment Standards Branch.

Ms. Jones wrote in part as follows: "*The Determination speaks for itself. The former Delegate, relied upon the information submitted during the investigation.*"

## ANALYSIS

Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:

- (a) the delegate for the Director erred in law
- (b) the delegate for the Director failed to observe the principles of natural justice in making the determination; or
- (c) evidence has become available that was not available at the time the determination was being made.

I have determined that it is efficient to consider both of the appeals in one Decision. The appellant in each case has the burden of demonstrating that there is an error in the Determination which would warrant the intervention of the Tribunal to vary or cancel the Determination.

The Tribunal may not set aside findings of fact made by a delegate for the Director unless, in reaching conclusions, the delegate for the Director erred in law, or failed to observe the principles of natural

justice; or the Tribunal finds that the determination ought to be set aside because new evidence has become available that was not available at the time it was made.

Principles of natural justice are, in essence, procedural rights to ensure that parties have an opportunity to know the case against them; the right to present their evidence; and the right to be heard by an independent decision maker. The Tribunal has previously held that when the Director and the delegates for the Director conduct investigations into complaints filed under the *Act*, they are acting in a quasi-judicial capacity. Consequently, they must perform their functions in an unbiased and neutral fashion. The parties are entitled to procedural fairness and must be given the opportunity to respond to the evidence and arguments presented by an adverse party. (See *BWI Business World Incorporated* BC EST #D 050/96).

Although both parties submitted that the delegate for the Director failed to observe the principles of natural justice, there is no evidence that the investigation process, including the Fact Finding Conference, conducted by the delegate for the Director was unfair. The parties had the opportunity to present documents and explain their positions. They did not allege that the delegate for the Director had refused to consider their evidence or submissions, or was not an independent decision maker.

There is no evidence of a denial of natural justice on the Appeal Forms, or in the materials filed with these appeals. Clearly, the parties take issue with the findings which were made by the delegate in the Determination.

It is not appropriate for the Tribunal to interfere with the findings of fact made by the Director if they do not amount to the kind of errors contemplated by s.112, even if the Tribunal might not have reached the same findings of fact. The Determination and the extensive evidence on the file show that there was evidence to support the findings and conclusions reached by the delegate for the Director.

As it was not established that the delegate for the Director had failed to observe the rules of natural justice, the appeals are dismissed.

## **ORDER**

Pursuant to Section 115 of the Act, I order that the Determination dated October 29, 2004 is confirmed.

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**Carol Ann Hart**  
**Member**  
**Employment Standards Tribunal**