

An appeal

- by -

Millennium Technology Inc.  
("Millennium")

- 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

**ADJUDICATOR:** Carol L. Roberts

**FILE No.:** 2002/585

**DATE OF DECISION:** January 28, 2003

## DECISION

This decision is based on written submissions by I. Cheng on behalf of Millennium Technology Inc. ("Millennium"), Yang Hu, and Barbara Watson, a delegate of the Director of Employment Standards.

### OVERVIEW

This is an appeal by Millennium, pursuant to Section 112 of the *Employment Standards Act* ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued November 5, 2002. Yang Hu alleged that his employment was terminated without cause, notice or compensation for length of service, and that he was owed outstanding wages for work performed December 3, 2001.

The Director concluded that Mr. Hu was entitled to compensation for length of service, wages and vacation pay, and interest in the total amount of \$2,247.59.

### ISSUE TO BE DECIDED

Whether the Director's delegate erred in concluding that Mr. Hu was entitled to compensation and wages.

### FACTS

As determined by the delegate, and not disputed, the facts are as follows.

Mr. Hu worked as a systems hardware engineer for Millennium, a medical equipment manufacturer, from July 21, 1999 to December 3, 2001.

Mr. Hu was placed on temporary layoff commencing December 4, 2001. His expected date of recall was March 6, 2002.

Mr. Hu alleges he was laid off on November 30, 2001, without advance notice. Although he worked December 3, he was not paid for that work. He received a Record of Employment ("ROE") dated November 30 that day, which indicated he was being laid off because of a shortage of work.

Mr. Hu alleged that he was not recalled to work until October, 2002. He stated that he had an answering machine, and that Millennium had both his telephone number and current address.

Millennium asserted that it called Mr. Hu to return to work in February 2002. It contended that Mr. Hu was taking an English course, and advised Millennium to wait, that he would give them his decision later. Millennium contended that Mr. Hu did not respond until August, 2002. A representative of Millennium advised the delegate that Mr. Hu was not telephoned until September to work in October because business was slow. Millennium did not provide the delegate with any evidence it attempted to call Mr. Hu in February.

Millennium did not respond to Mr. Hu's allegation that he was owed wages for December 3.

The delegate concluded that Millennium had provided insufficient evidence to persuade her that Mr. Hu was recalled to work within the 13 weeks of layoff provided under s. 1. Consequently, she determined that Mr. Hu's employment had been terminated, and that he was entitled to compensation for length of service as provided by s. 63 of the Act.

She also concluded that Mr. Hu was entitled to wages for December 3 in the absence of any submissions or evidence from Millennium that he was not.

## **ARGUMENT**

Millennium argues that the delegate erred in concluding that Mr. Hu was called to work in February. It contends that, because Mr. Hu indicated he was unavailable, it recalled another employee.

Millennium argued that it was unfair that it had the burden of establishing that it attempted to call Mr. Hu.

Millennium also asserted that, on November 30, it gave verbal notice to Mr. Hu that it was changing his job from an employee to a contractor. It asserts that Mr. Hu did not object to this change at the time, and returned to work on December 3. It further contends that, on December 3, Mr. Hu objected to the change, and asked for his ROE.

Mr. Hu disputes Millennium's assertions that he was called before September 9, 2002. He further submits that he did not agree to the employment status change.

The delegate contends that the Determination should be upheld, and that it clearly addresses all the points of appeal.

## **ANALYSIS**

The burden of establishing that the Determination is incorrect rests with an Appellant. Having reviewed the submissions of the parties, I am unable to find that the delegate erred.

Millennium provided no evidence that the Determination is incorrect. It merely repeats arguments made to the delegate.

An appeal is not an opportunity to reargue a case. It is insufficient for an appellant to say that a Determination is wrong without providing some supporting evidence or compelling argument that it is.

Millennium had full opportunity to provide the delegate with all relevant information regarding the complaint. As there are no new facts presented on appeal, it cannot succeed.

I am unable to find that the delegate erred in placing the burden of establishing that it called Mr. Hu to work on Millennium. Mr. Hu is not in a position to disprove that they did so. Given that an employer is obliged to pay compensation for length of service pursuant to s. 63 unless it discharges that burden by showing that an employee quit or was fired for cause, the burden similarly lies with an employer to demonstrate that no compensation is owed.

**ORDER**

I Order, pursuant to Section 115 of the Act, that the Determination, dated November 5, 2002, be confirmed, together with whatever interest may have accrued since the date of the determination, pursuant to s. 88 of the Act.

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**Carol L. Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**