Employment Standards TRIBUNAL

An appeal

- by -

Pioneer Business and Tax Services and Associates Ltd. operating as Pioneer Business Services

("Pioneer")

- 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:** Kenneth Wm. Thornicroft

**FILE No.:** 2002/577

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

# DECISION

## OVERVIEW

This is an appeal filed by Pioneer Business and Tax Services and Associates Ltd. ("Pioneer") pursuant to section 112 of the *Employment Standards Act* (the *"Act"*). Pioneer appeals a Determination that was issued by a delegate of the Director of Employment Standards (the "Director") on October 29th, 2002 (the "Determination").

The Director's delegate determined that Pioneer terminated Ms. Shou Li ("Li") without just cause [see section 63(3)(c) of the *Act*] and, accordingly, owed her one week's wages as compensation for length of service. The total amount payable, including 4% vacation pay and section 88 interest, is the sum of $362.38.

By way of a letter dated January 16th, 2002 the parties were advised by the Tribunal's Vice-Chair that this appeal would be adjudicated based on their written submissions and that an oral hearing would not be held (see section 107 of the *Act* and *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575).

## ISSUES ON APPEAL

Although the expressed reasons for appeal are somewhat perfunctory, it is obvious that Pioneer disagrees with the delegate's conclusion that it did not have just cause to terminate Ms. Li.

## FACTS AND FINDINGS

Pioneer provides bookkeeping and tax preparing services. Ms. Li was employed as a bookkeeper with the firm for about five months. The events that triggered her dismissal occurred on March 20th, 2002 and concerned Ms. Li preparing a tax return for her mother on "company time", allegedly without her employer's permission. The matter escalated into a physical confrontation between Ms. Li and Pioneer's principal, Mr. Reza Hooshmand; Ms. Li alleges that Mr. Hooshmand bit her and there is evidence before me (also referred to in the Determination) that Ms. Li attended the local hospital's emergency ward for treatment (she was given an antibiotic) of a "bit[e] by her boss". The material before me shows that the Workers' Compensation Board accepted Ms. Li's claim as a compensable, though minor, work-related injury. Further, on November 15th, 2002, Judge Grandison of the B.C. Provincial Court ordered, by way of a Recognizance, that Mr. Hooshmand keep the peace and have no contact with Ms. Li for a period of six months.

On March 22nd, 2002, Pioneer issued a letter of termination alleging three incidents of misconduct--preparing the tax return; failing to attract "Chinese clients" and "swearing in front of other staff".

I note that the second ground is more a matter of performance than misconduct and does not constitute just cause for termination. The third matter appears to have been raised as an additional ground after the events of March 20th transpired and has not, in any event, been corroborated.

Pioneer submitted four sworn statements in support of its appeal. The statement of Ms. Keeble confirms that there was an altercation and that Ms. Li claimed that Mr. Hooshmand bit her. Mr. Khamsi's statement suggests that he had been told not to use "office time and equipment for my personal use". Ms. Soulsby's and Mr. Sahami's statements are to like effect. I note that these latter three statements indicate that there was not an absolute prohibition with respect to personal use of the employer's time and equipment but that such activities were permissible provided the employer first granted its permission.

Although Ms. Li denies that she had been informed that she was absolutely prohibited from preparing a personal or family member's tax return while at the employer's premises, I find that I need not make a finding one way or the other on this disputed point. Even if there was such a policy, I am not satisfied that a single contravention of that policy (and the evidence that Ms. Li was informed about that policy is entirely hearsay evidence and not very reliable) justifies summary dismissal without cause. On the balance of probabilities, I am of the view that the termination was triggered as a result of the physical altercation between the parties and that the altercation appears to have been primarily instigated by Mr. Hooshmand rather than Ms. Li.

In the circumstances, I see no reason to set aside the Determination. The appeal is dismissed.

## ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **$362.38** together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

**Kenneth Wm. Thornicroft**
**Adjudicator**
**Employment Standards Tribunal**