

An appeal

- by -

Cathay Traditional Chinese Medicine Centre Ltd.
("Cathay")

- 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: Norma Edelman

FILE No.: 2001/830

DATE OF DECISION: February 18, 2002

DECISION

This matter arises out of a referral back to a delegate of the Director of Employment Standards in Tribunal Decision BC EST # D169/01 to establish what wages are owed to Tin Yu Annie Yan ("Yan") by Cathay Traditional Chinese Medical Centre Ltd. ("Cathay"). The owner of Cathay is Chih Cheng Chu ("Chu").

In Tribunal Decision BC EST # D169/01, the Adjudicator found that Yan earned \$6,408.50 and received four cheques from Successful Investment Inc. ("Successful") amounting to \$4,284.34. The Adjudicator said Successful appeared to be another of Chu's companies. The Adjudicator referred the matter back to the delegate to determine whether Yan "has or has not been paid wages and the calculation of the amount owing...".

On November 20, 2001, the Tribunal received a report from the delegate dated November 19, 2001. The delegate concluded that the cheques received by Yan did not represent payment of wages for work performed at Cathay, as asserted by Chu and his daughter, Kathy Chu ("K. Chu"). Rather, the delegate accepted Yan's position that the cheques represented monies she received for a work related car accident and reimbursement for expenses incurred in purchasing supplies for Cathay. The delegate did not find Chu to be credible, nor did he accept K. Chu's views as adequate. The delegate also noted that Chu failed to comply with the requirements of the *Act* to keep, produce, and provide payroll records when demanded by the Director of Employment Standards. The delegate concluded Yan was owed \$7,331.76 including interest to October 30, 2001.

The Tribunal forwarded the delegate's report to Cathay and Yan on November 27, 2001. No reply was received from Yan. Chu replied that all four cheques represented wages paid to Yan. He said the cheque for \$2000 represented her monthly wage based on a salary of \$24,000 per year. Further, Yan had insurance on her car and he had nothing to do with the accident. Moreover, Yan denied receiving money from him in the original investigation until he said he could provide copies of the cheque from the bank. As for the other three cheques, they also represented payment of wages and were not reimbursement cheques. He enclosed copies of the 4 cheques which appear to be made out to Yan.

The delegate replied to Chu's submission on January 10, 2002 stating that it is the responsibility of the employer to keep proper payroll records and provide relevant documents; the cheques could have represented payments for monetary obligations other than for wages; and the burden of proof is not on the employee or the Director and the employer has failed to establish the purposes of the cheques.

This matter has been decided based on the written submissions received from the delegate and Chu.

The burden is on the Appellant, Cathay, to persuade me that the delegate erred in accepting that the 4 cheques received by Yan did not represent wages. I am not satisfied that it has met that burden.

I agree with the delegate that it is Cathay's responsibility to show that the cheques represented wages. It has not done so. There is nothing on the cheques to show they were payments for wages; the company name on the cheques is not Cathay but Successful; and Cathay has presented no other evidence, such as pay stubs showing rates of pay, hours of work, statutory deductions, etc., which it is obliged to keep under the Act, to support its position that the cheques represented wages.

Given the above, I find no reason to conclude that the delegate's conclusion regarding the amount of wages owed by Cathay to Yan is wrong.

ORDER

Pursuant to Section 115 of the *Act* and further to Tribunal Decision BC EST # D169/01, I order that the Determination dated October 24, 2000 be varied to show Cathay owes Yan \$7331.76, plus any other interest accumulated pursuant to Section 88 of the *Act* since October 30, 2001.

Norma Edelman
Adjudicator
Employment Standards Tribunal