

An appeal

- by -

Treasures Of The Nile Imports Ltd.

- 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.:** 2002/4

**DATE OF DECISION:** March 21, 2002

## DECISION

### OVERVIEW

This is an appeal by Treasures of the Nile Imports Ltd. (the "Employer") under Section 112 of the *Employment Standards Act* (the "Act") against a Determination, which was issued on December 11, 2001 by a delegate of the Director of Employment Standards. The Determination found that the Employer owed Joyous Zhao ("Zhao") wages and compensation for length of service in the amount of \$3882.62, including interest. The Employer appealed the Determination on January 3, 2002. It seeks to have the Determination referred back for further investigation.

### ISSUE TO BE DECIDED

Has the Employer shown that the Determination is incorrect and should be cancelled, varied or referred back to the delegate for further investigation?

### FACTS AND ANALYSIS

Zhao worked for the Employer as a salesperson from March 2000 to December 6, 2000.

Zhao filed a complaint at the Employment Standards Branch claiming the Employer owed her regular wages, overtime, statutory holiday pay, vacation pay and compensation for length of service.

The delegate found that the Employer owed Zhao wages and compensation for length of service in the amount of \$3882.62, including interest. The delegate relied on the Employer's records in determining Zhao's wage entitlement. He stated that the Employer provided no evidence that it had paid vacation pay and statutory holiday pay. Although Zhao had claimed wages for a training period, the delegate did not include these wages in his calculations as the Employer had no records and he found Zhao's records to be unreliable. The delegate further accepted that the Employer did not, as it claimed, have just cause to dismiss Zhao. The Employer said Zhao had engaged in theft, but Zhao denied she stole merchandise or money and the Employer provided no proof she had stolen items and it did not lay charges against Zhao.

The Employer's accountant filed an appeal of the Determination on January 3, 2002. Its appeal in whole reads as follows:

Per our client everything has been paid except for \$300.00 which was the value of the globe stolen and the person was not to be paid for training and overtime.

We want the case to go back for further investigation so that our client can explain exactly what happened and clarify the situation more clearly.

The delegate and Zhao were invited to reply to the appeal. Zhao, in effect, said she agreed with the Determination. In his reply, the delegate pointed out he relied on the Employer's records in determining the amount of wages owed to Zhao; he did not include wages for the training period in his calculations; and no evidence of Zhao's alleged dishonesty has been presented in support of a just cause defense.

The Employer was given an opportunity to make a final reply to the submissions of the delegate and Zhao. The Employer made no final reply.

The burden is on the Appellant to show that a Determination should be cancelled, varied or referred back for further investigation. In this case I am not satisfied that the Employer has met that burden.

The Employer's reasons for appeal are that Zhao has been paid everything except \$300.00 for a stolen globe and she was not to be paid for training and overtime. As noted by the delegate, he did not find that Zhao was owed wages for training. He did find she was owed other wages, including vacation pay and statutory holiday pay, based on the Employer's own records. The Employer has not shown that the delegate erred when he awarded Zhao these wages. Further, it is a violation of the *Act* not to pay overtime and to withhold \$300.00 for an alleged stolen globe. Part 4 of the *Act* provides that if an employee works overtime hours, the employee is entitled to overtime rates of pay. Section 21 of the *Act* prevents an employer from deducting amounts from an employee's wages for any reason, including deducting monies to offset the value of alleged stolen property. An employer's remedy, in the latter case, is to proceed in the courts.

I further find that the Employer has not shown the delegate erred when he awarded Zhao compensation for length of service. In its appeal, the Employer did not provide any evidence that it has paid Zhao compensation for length of service, nor did it challenge the delegate's conclusion regarding compensation for length of service. I have reviewed the delegate's findings and analysis as set out in the Determination and I agree the Employer has not established just cause for Zhao's dismissal. Accordingly, the Employer is liable for compensation for length of service pursuant to Section 63 of the *Act*.

The Employer has requested that this case be referred back for further investigation so it can explain exactly what happened and clarify the situation. However, there is nothing in front of me, which shows the Employer was prevented from making its full case before the delegate during the investigation process. As well, the Employer had a full opportunity to rebut the Determination during the appeal process. Accordingly, I find no basis for referring this matter back for further investigation. Nor do I find any basis to vary or cancel the Determination.

**ORDER**

I order under Section 115 of the *Act* that the Determination dated December 11, 2001 be confirmed.

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**Norma Edelman**  
**Adjudicator**  
**Employment Standards Tribunal**