

An appeal

- by -

Tri-Star Seafood Supply Ltd.
("Tri-Star")

- 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 (as amended)

TRIBUNAL MEMBER: Carol L. Roberts

FILE No.: 2008A/99

DATE OF DECISION: October 10, 2008

DECISION

SUBMISSIONS

Marvin Lithwick on behalf of Tri-Star Seafood Supply Ltd.

M. Elaine Phillips on behalf of the Director of Employment Standards

OVERVIEW

1. This decision arises out of an appeal by Tri-Star Seafood Supply Ltd., ("Tri-Star"), pursuant to Section 112 of the *Employment Standards Act* ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued May 7, 2008. On September 2, 2008, I issued a decision dismissing the appeal on the issue of whether or not Mr. Tsang was a manager. However, I did conclude that the delegate had erred in calculating Mr. Tsang's hourly wages and referred the matter back for recalculation of Mr. Tsang's overtime wage entitlement. (BC EST #D90/08)
2. On September 10, 2008, the delegate issued a letter in which she set out her calculations for Mr. Tsang's regular and overtime wages for the period July 1 through December 31, 2006. On the basis of her recalculations, the delegate determined that Mr. Tsang was entitled to wages and interest in the total amount of \$5,994.07.
3. The Tribunal received no response to the delegate's letter on the referral back from either Tri-Star or Mr. Tsang.
4. Section 36 of the *Administrative Tribunals Act* ("ATA"), which is incorporated into the *Employment Standards Act* (s. 103), and Rule 17 of the Tribunal's Rules of Practice and Procedure provide that the Tribunal may hold any combination of written, electronic and oral hearings. (see also *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575). This appeal is decided on the delegate's letter and the submissions of the parties.
5. Neither party responded to the delegate's letter outlining the revised calculations by the deadline provided by the Tribunal.
6. In the absence of any response from the parties and having reviewed the delegate's calculations, I confirm the award.

ORDER

7. I Order, pursuant to Section 115 of the *Act*, that the May 7, 2008 Determination be varied to show that Mr. Tsang is entitled to wages and interest in the amount of \$5,994.07.

Carol L. Roberts
Member
Employment Standards Tribunal