

An appeal

- by -

Hui Wei  
(“ Wei”)

- 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.:** 2001/783

**DATE OF HEARING:** April 10, 2002

**DATE OF DECISION:** April 12, 2002

## DECISION

### APPEARANCES:

On her own behalf	Hui Wei
For Tamoda Apparel Inc.	C. Cheung

### OVERVIEW

This is an appeal by Hui Wei, pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against a Determination of the Director of Employment Standards (the “Director”) issued October 16, 2001. The Director's delegate found that Ms. Wei was not owed overtime wages by Tamoda Apparel Inc. (“Tamoda”). The delegate also found that Tamoda had reimbursed Ms. Wei for MSP payments made on her behalf, and dismissed her complaint.

### ISSUE TO BE DECIDED

Whether the Director erred in dismissing Ms. Wei's complaint. Ms. Wei contends that the delegate erred in using Tamoda's time cards to calculate her wages, and in finding that she had been reimbursed for MSP payments.

### FACTS

Ms. Wei worked for Tamoda from September 4, 1999 to October 20, 2000 as a garment worker. She complained that Tamoda owed her overtime pay, and that Tamoda made deductions from her wages for MSP premiums.

The Director's delegate reviewed Tamoda's time cards and payroll records in the course of the investigation, and determined that Ms. Wei was owed \$2669.58. Tamoda forwarded a cheque in that amount payable to Ms. Wei, to the Director. After the appeal was filed, Tamoda discovered additional time cards for the period September 5 to 11, 1999. It acknowledged an obligation to pay an additional \$429.38 for wages and overtime pay.

Tamoda advised the delegate that it deducted \$36 per month from each employee's wages for MSP benefits. Once the money was refunded by the Ministry of Health, it was reimbursed to the employee. Tamoda forwarded a cheque in the amount of \$216 respecting those costs to the delegate as well. Ms. Wei has refused to accept the amount, contending that she is owed \$720.

The delegate indicated that Ms. Wei did not dispute Tamoda's records, but claimed that she was owed more than the amount calculated by the delegate. The delegate faxed a copy of her computer calculations prior to issuing the decision, seeking Ms. Wei's comments. Ms. Wei continued to dispute the delegate's calculations, claiming that she calculated her overtime

incorrectly. It appears that Ms. Wei is of the view that she must be paid double time for hours worked in excess of 48 hours per week .

The delegate found that an employer was not obliged to provide medical benefits to an employee, but if Tamoda did so with Ms. Wei's consent to deduct the costs from her wages, there had been no contravention of the *Act*. In any event, the delegate concluded that Tamoda had reimbursed Ms. Wei for any deductions made.

## ANALYSIS

The burden of establishing that the Determination is incorrect rests with an Appellant. In my view, Ms. Wei has failed to discharge this burden.

It is insufficient for an appellant to say that a Determination is wrong without providing some supporting evidence or compelling argument that it is. Ms. Wei argues that the delegate erred in using Tamoda's time cards to calculate the wages owed to her. While she does not dispute that the delegate examined the time cards provided by Tamoda that she herself used while employed, she contends that her own records are more accurate. However, she provides no compelling evidence as to why her records should be preferred over those of Tamoda. She merely asserts that Tamoda's agents are unreliable and not credible.

I am not persuaded that Ms. Wei's records of hours worked was made contemporaneously. Tamoda's records were based on time cards punched by Ms. Wei when she arrived at, and left, work. Ms. Wei was paid based on Tamoda's records every pay period. Ms Wei did not complain at any time that her wages were incorrect. She acknowledges that she checked her pay and assumed she was paid the correct amount, but was later advised by a friend that the records may not be accurate.

There is no evidence the delegate did not calculate Ms. Wei's wages in accordance with the *Act*. I do not agree that the delegate erred in preferring Tamoda's schedule of Ms. Wei's hours of work to Ms. Wei. Further, having relied on Tamoda's records, and calculated Ms. Wei's wages in accordance with the *Act*, I find no grounds for Ms. Wei's argument that the delegate erred in her calculations. The *Act* does not specify that all hours worked in excess of 48 hours per week are paid at double time.

Further, I accept that Tamoda deducted a total of \$360.00 from Ms. Wei's pay for MSP premiums. It had reimbursed Ms. Wei \$144 prior to the complaint, and has since provided the delegate with a cheque representing the balance. Ms. Wei also claims a further \$360, representing Tamoda's contribution to the MSP on her behalf. Because this amount was not deducted from Ms. Wei's wages, she has no entitlement to recover it under the *Act*.

**ORDER**

I Order, pursuant to Section 115 of the *Act*, that the Determination, dated October 16, 2001, be confirmed.

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