

An appeal

- by -

Mt. Rocky Investment Ltd.
("Mt. Rocky")

- 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: Michelle Alman

FILE No.: 2000/856

DATE OF DECISION: March 23, 2001

DECISION

OVERVIEW

This is the final decision in an appeal filed pursuant to Section 112 of the *Employment Standards Act* (the "Act") by Mt. Rocky Investment Ltd. ("Mt. Rocky") from a Determination issued April 12, 2000, by a delegate of the Director of Employment Standards ("the Director"). In my decision of July 12, 2000 in this matter, BC EST #D269/00, I upheld the Determination's conclusion that Mt. Rocky had contravened section 63(2) of the Act in respect of the employment of Ms. Qing (Maureen) Zheng ("Zheng"). I found that Mt. Rocky owed Zheng \$719.99 as compensation for length of service, plus interest on that amount pursuant to section 88 of the Act from February 28, 1999, the date of Mt. Rocky's business closure.

As a consequence of Zheng's commencement of maternity leave, Mt. Rocky sought on November 10, 1998 to increase Zheng's rent for premises it provided to her as part of her terms of employment. Because there was no information in the Determination concerning Zheng's having consented to the change in rent, I referred the matter back to the Director for investigation. The Director's delegate completed his investigation and concluded in his December 14, 2000 report to the Employment Standards Tribunal that Zheng did not consent to the change in rent. He found that Mt. Rocky did contravene section 54(2)(b) of the Act when it increased Zheng's rent in response to her commencement of maternity leave, and that Zheng incurred documented moving-related and other expenses following her receipt of notice of the change in rent. The Director's delegate recommended that Mt. Rocky be ordered, pursuant to sections 79(4)(c) and (d) of the Act, to pay Zheng the amount of \$2,438.28 for compensation for her moving, utility hook-up and rental variation expenses. Zheng moved twice. She moved shortly after November 10, 1998 to move away from the Mt. Rocky premises, and again on March 1, 1999 to move nearer to the business in order to return to work at the end of her maternity leave. The Director's delegate declined to assess a penalty against Mt. Rocky for its contravention of section 54(2)(b) in light of its cessation of business.

While Zheng was cooperative, Mt. Rocky failed to participate in the Director's investigation of the possible violation of section 54(2)(b). When sent the Director's report by the Tribunal, neither of the parties made a written response.

ISSUES

The issues to be decided are whether Mt. Rocky contravened section 54(2)(b) of the Act, and if so, whether Mt. Rocky owes Zheng the additional amount of \$2,438.28 in compensation for that contravention.

THE FACTS AND ANALYSIS

The facts are set out in BC EST #D269/00. In that decision I found that if Zheng did not consent to the proposed change in her rent consequent to her commencement of maternity leave, Mt. Rocky had violated section 54(2)(b) of the *Act*. In light of the Director's delegate's investigation and the absence of response from Mt. Rocky, I find that Zheng did not consent to the change in her rent and that Mt. Rocky contravened section 54(2)(b) on November 10, 1998.

The Director's delegate appended to his report Zheng's receipts for her relevant moving, utility and rental variation expenses subsequent to Mt. Rocky's proposed change in her rent. Zheng's November, 1998 move's expenses totaled \$454.91, while the March 1, 1999 move's expenses came to \$1,983.37. In order to address the calculation of interest, I find that Zheng's first move likely took place on November 15, 1998, the last date for which she paid cable at the Mt. Rocky rental premises. In the total of \$2,438.28 claimed, Zheng did not include \$240 for truck rental and labour fees because she had lost the receipts. All other expenses are receipted or proven by means of provision of copies of leases. I accordingly find that, pursuant to the *Act's* provisions in section 79(4)(c) and (d) of possible remedies for violations of section 54, Mt. Rocky owes Zheng the additional amount of \$2,438.28 as compensation for Zheng's actual out of pocket expenses incurred because of Mt. Rocky's contravention of section 54(2)(b).

ORDER

Pursuant to section 115 of the *Act*, I vary the Determination and Penalty issued April 12, 2000 to order that Mt. Rocky pay Zheng the amount of \$3,158.27, plus interest as provided by section 88 of the *Act*. The interest calculations shall be made on \$719.99 from the date of Zheng's employment termination, February 28, 1999; on \$454.91 from the date of November 15, 1998; and on \$1,983.37 from March 1, 1999.

MICHELLE ALMAN

**Michelle Alman
Adjudicator
Employment Standards Tribunal**