

An appeal

- by -

IND Diagnostic Inc.  
(the "Employer")

- 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:** Kenneth Wm. Thornicroft

**FILE No.:** 2003A/30

**DATE OF HEARING:** April 22, 2003

**DATE OF DECISION:** May 6, 2003

## DECISION

### APPEARANCES:

James Yang, Human Resources Manager	for IND Diagnostic Inc.
Zhang Wei	on her own behalf
David Tan	Interpreter (Mandarin)

### INTRODUCTION

This appeal is filed pursuant to section 112 of the *Employment Standards Act* (the “Act”) by IND Diagnostic Inc. (the “Employer”). The Employer appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on December 23rd, 2002 (the “Determination”) pursuant to which it was ordered to pay its former employee, Ms. Zhang Wei (“Wei”), the sum of \$671.37 on account of one week's wages as compensation for length of service, overtime pay, statutory holiday pay and section 88 interest.

This appeal was heard at the Tribunal's offices in Vancouver on April 22nd, 2003 at which time I heard the testimony (under oath) of Mr. James Yang, on behalf of the Employer, and Ms. Wei on her own behalf. Ms. Wei Fu, a former employee of the Employer, also testified on behalf of Ms. Wei. No one appeared at the appeal hearing on behalf of the Director. Ms. Wei and her witness both testified with the assistance of a mandarin interpreter.

### REASONS FOR APPEAL

The Employer appeals the Determination on the ground that the Director's delegate failed to observe the principles of natural justice [section 112(1)(b) of the *Act*]. However, as Mr. Yang developed the Employer's argument both in written submissions and at the appeal hearing, it is clear that the Employer's challenge more properly falls under section 112(1)(a)--the Director erred in law.

More specifically, the Employer says that Ms. Wei was not entitled to any compensation for length of service since she received one week's written notice of termination pursuant to section 63(3)(a)(ii) of the *Act*. The Employer in essence says that this latter award was made without a proper evidentiary foundation and, if that were so, that would amount to an error of law. The Employer does not challenge the Determination as it relates to the other unpaid wage claims. Thus, only the award for one week's wages under section 63 (\$348.37) is under appeal.

I might add that there is nothing in the material before me that would support the assertion that the Director's delegate failed to observe the principles of natural justice in making the Determination. The Employer was given a full and fair opportunity to participate in the delegate's investigation; it simply disagrees with the delegate's finding under section 63 of the *Act*.

## FINDINGS AND ANALYSIS

As noted above, the Employer says that it gave Ms. Wei sufficient written notice of termination and, accordingly, should not have to pay her any compensation for length of service. Mr. Yang submitted a letter, dated July 6th, 2001 under the signature of Ms. Shuli Wang (identified as the Employer's "General Manager"), which purports to give Ms. Wei approximately two weeks' written notice of termination.

There are, however, several evidentiary problems with this submission.

I will first address Ms. Wei's evidence which, I might add, is totally uncontradicted. Ms. Wei says that this letter, although dated July 6th, 2001, was not provided to her until August 8th, 2001 when she was formally notified that her employment was terminated. Ms. Wei says that her employment commenced in October 2000 and continued until July 2001 when she was told by her supervisor that due to a lack of work she should not report to work but rather stay at home and that she would be recalled when work was available. She says that no formal written notice of termination was given to her at this time and that she did not understand her employment was being terminated.

Not having been recalled, she and a couple of other employees decided to report for work on August 7th and was at that time told she was laid off. She was given some documents (that were in english) at this time by Ms. Shuli Wang but she refused to sign any of them and thus Ms. Wang took the documents back and asked her to return the next day. An argument ensued, involving all of the employees, with Ms. Shuli Wang regarding their entitlement to termination pay. The next day, August 8th, she returned to work and was given the July 6th termination letter and a record of employment dated August 8th, 2001.

Ms. Wei Fu, also a former employee, and one of the other employees who attended at the workplace on August 7th and 8th with Ms. Wei, essentially corroborated Ms. Wei's testimony.

Mr. Yang is not in a position to contradict Ms. Wei's evidence (he was not involved in this particular issue in any fashion until after the events in question occurred) and I do not have before me any other testimony from the Employer that would call into question Ms. Wei's version of events, most especially, I do not have any evidence before me from Ms. Shuli Wang. Since there was no explanation for Ms. Wang's failure to testify before me, I draw an adverse inference.

Ms. Wei's evidence is, in part, corroborated by the fact that the Employer did not issue her a Record of Employment until August 8th, 2001 which is consistent with the testimony of both Ms. Wei and Ms. Fu to the effect that records of employment and the July 6th termination letters were given to each of them at the same time and on the same day.

The Employer bears the burden of proving that the Determination was clearly wrong with respect to the matter of compensation for length of service. In my view, the Employer has simply not discharged its evidentiary burden.

The Employer's appeal is dismissed.

**ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$671.37** together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

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**Kenneth Wm. Thornicroft**  
**Adjudicator**  
**Employment Standards Tribunal**