

An appeal

- by -

International Newtech Development Incorporated  
(“IND” or the “Appellant”)

- 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:** Wayne Carkner

**FILE No.:** 2003A/228

**DATE OF DECISION:** November 10, 2003

## DECISION

### SUBMISSIONS

Jia-Bei Zhu	on behalf of IND
Chu Cheong Jinn	on behalf of himself
Lynne Egan	on behalf of the Director of Employment Standards

### OVERVIEW

This is an appeal by IND of a Determination issued by the Director on July 11, 2003. The Determination found that IND had contravened Sections 35 and 40 of the Employment Standards Act (the “*Act*”) and determined that Jinn, the complainant, was entitled to \$4741.13 for overtime wages, annual vacation pay on overtime wages and interest accrued pursuant to Section 88 of the *Act*. IND has filed this appeal based on the ground that the Director failed to comply with the principles of natural justice in making the Determination.

The Tribunal has decided that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

### ISSUE

Did the Director fail to observe the principles of natural justice in making the Determination?

### ARGUMENT

In the Appellant’s application for appeal of the determination IND alleges as the grounds for appeal were that “The Director failed to observe the principles of natural justice in making the Determination”. IND asserts that the Director “misunderstood our explanation” of Jinn’s claim for overtime wages. The Appellant provided no details of this statement. IND had no exceptions to the Director’s method of calculating the overtime payment as detailed in the Determination.

Jinn’s submission is that based on the employer’s records he is clearly entitled to payment of overtime wages. Jinn made no submission on the issue of “natural justice”.

In the Determination the Director found that as Jinn was not in a position excluded from the payment of overtime wages he is entitled to payment of overtime for all hours worked in excess of 8 in a day and all hours worked in excess of 40 in a week.

The Director made no submission on the issue of “natural justice”.

## THE FACTS AND ANALYSIS

Jinn was employed at IND from January 22, 2001 to February 8, 2002. Jinn was initially employed as “mechanical technician” and was later given the title of “high tech equipment designer and developer”. Jinn’s rate of pay commenced at \$10.00 per hour and his wage rate was \$14.42 when his employment ceased. The Director outlined in the Determination that IND first took the position that Jinn was working in a position excluded from payment of overtime. The Director outlined numerous requests for evidence to support this position and detailed that none were provided by IND. The Director calculated the overtime wages owing to Jinn based on the actual hours worked as provided by the Employer’s documentation of the times Jinn punched in and out on the Employer’s time clock.

IND has alleged that the Director has failed to “observe the principals of natural justice”. IND has provided no reasons or evidence to support this allegation. The Appeal Application Form states that an explanation is required when the aforementioned ground of appeal is alleged. The comment “the Director misunderstood our explanation” does not constitute an explanation. The burden of proof to establish that the Director failed to observe the principles of natural justice when making the Determination falls with the Appellant. IND has failed to meet this burden.

The appeal is denied.

## ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated July 11, 2003 be confirmed in the amount of \$4741.13 plus any additional interest accrued pursuant to Section 88 of the *Act*.

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**Wayne Carkner**  
**Adjudicator**  
**Employment Standards Tribunal**