

An appeal

- by -

Susan Xie

- 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: M. Gwendolynne Taylor

FILE No.: 2001/226

DATE OF HEARING: May 25, 2001

DATE OF DECISION: June 20, 2001

DECISION

APPEARANCES:

Susan Xie	on her own behalf
Cindy Turcotte	on behalf of Dr. C. Ross Crapo Inc. (“employer”)

OVERVIEW

Pursuant to section 112 of the *Employment Standards Act*, Susan Xie filed an appeal from a Determination by the Director dated March 2, 2001. In the original complaint, Ms. Xie alleged that the employer had failed to pay regular wages, annual vacation pay, and statutory holiday pay, and that the employer required special clothing without providing an allowance for cleaning and maintenance. The Director found that the employer had not underpaid for wages but had failed to pay a clothing allowance. The Director’s calculation of the salary owing resulted in a finding that Ms. Xie had been overpaid by \$88.02. The Director’s clothing allowance calculation was \$57.69. The result was a finding that Ms. Xie had been overpaid.

On March 13, 2001, Ms. Xie appealed asking that the calculation of her salary be reviewed. A major point of contention for her was that she had been paid her regular salary over Christmas when the office was shut down. Subsequently, the employer deducted the overpayment. Ms. Xie accepted the clothing allowance calculation and acknowledged that she received the vacation pay.

ISSUE

Did the Director correctly calculate the wages owed and paid during Ms. Xie’s employment.

THE FACTS AND ANALYSIS

The employer is a dental practice. Ms. Xie worked from October 23, 2000 to January 15, 2001 at a monthly salary of \$1,100 based on a four day week, usually Monday through Thursday. The staff take annual vacation during the summer. The office closes for approximately two weeks over Christmas.

To compensate for closed days - statutory holidays or during Dr. Crapo’s absence (for seminars, etc.) - the staff work some Fridays. The staff are compensated for their statutory holidays by being paid during the office closure over Christmas.

During Ms. Xie’s employment, the office was closed November 6 to 9; the staff worked October 27, November 17, November 24 and December 1 to compensate for the closure. The office was closed from December 20, 2000 to January 8, 2001.

Cindy Turcotte testified that she informs potential employees of the salary, hours, statutory holiday handling, and Christmas closure. There is a poster in the office setting out time considerations, such as Christmas closure. Ms. Turcotte acknowledged that there was an error by the payroll clerk in paying Ms. Xie for the Christmas closure. The office was closed for 10 days: 3 statutory holidays and 7 regular days. When she corrected the error, she deducted 6 days from Ms. Xie's salary. Ms. Xie was paid for the statutory holidays.

The employer's position was that Ms. Xie had not worked enough statutory holidays to entitle her to salary during the Christmas closure. Ms. Xie's position is that she is entitled to receive \$1,100 per month, regardless of whether the office was closed for statutory holidays or Christmas vacation. She does not recall anything being said about the Christmas closure when she was interviewed and agreed to accept the position.

The Director found that the *Act* does not require an employer to pay an employee for hours not worked and does permit an employer to deduct an overpayment of wages. The Director calculated a daily salary rate of \$63.46, and applied that to the number of days Ms. Xie worked.

Considering all of the evidence, I find that it is probable that Ms. Turcotte advised Ms. Xie of the office practices concerning closures and statutory holidays. Accordingly, I accept the employer's statement of the terms and salary of employment.

Ms. Xie has not submitted evidence or argument to substantiate a claim that the Director erred.

I accept the Director's findings. Ms. Xie is entitled to be compensated only for the days she worked. Although there may be different methods of calculating the salary owed during Ms. Xie's employment, I find that the Director's method is as correct as any other. I find the Director's method results in a fair calculation. There is no method of calculation that would result in the employer owing Ms. Xie further salary.

ORDER

Pursuant to section 115 of the *Act*, I confirm the Determination issued March 2, 2001.

M. Gwendolynne Taylor
Adjudicator
Employment Standards Tribunal