

**EMPLOYMENT STANDARDS TRIBUNAL**  
In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act R.S.B.C. 1996, C. 113*

- by -

Stitches Creation Inc.  
("Stitches")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Mark Thompson

**FILE NO.:** 1999/284

**DATE OF HEARING:** August 26, 1999

**DATE OF DECISION:** September 27, 1999

**DECISION**

**APPEARANCES**

Peter Chan	On behalf of Stitches Creation, Inc.
Jian Bin Li	On behalf of herself

**OVERVIEW**

This is an appeal by Stitches Creation, Inc. (“Stitches”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on April 26, 1999 (the “Determination”).

The Director’s delegate found that Stitches had violated Section 54(2)(a) of the *Act* by discharging Jian Bin Li (“Li”) because she was pregnant. The Determination ordered Stitches to pay Li \$1200.00 in compensation under Section 79 of the *Act*. Stitches appealed the Determination on the grounds that Li had quit her job and that her performance had been poor. She was asked to take two weeks off work because of economic conditions, but she then resigned. The quantum of Li’s compensation was not subject to appeal.

Li testified at the hearing with the assistance of an interpreter.

**ISSUE TO BE DECIDED**

The issue to be decided in this case is whether Stitches discharged Li because she was pregnant.

**FACTS**

Stitches hired Li on June 22, 1998, as an embroidery trainee for \$7.50 per hour. On June 25, she signed a contract with Stitches. The contract stated that Li could not quit in a year. When she signed the contract, Li informed management that she was pregnant, and her baby was due in December. The production manager, Louis Ng (“Ng”) told Li that her pregnancy did not matter and signed the contract on behalf of Stitches.

Li did not work on July 13 and 30, 1998. Li stated that her supervisor, Jeff Zhou, (“Zhou”), asked her to take those days off because business was slow. Zhou provided a statement to the Tribunal that Li applied for sick leave on each of those days. Zhou further stated that Li agreed that she felt unwell and should take a break from work on

July 31. Because production was slow for the two weeks beginning on August 3, 1998, he could afford to be one worker short. Peter Chan ("Chan"), President of Stitches, testified that Zhou orders layoffs for one-week periods. If an employee is off for one day, she would be absent at her own request.

Li stated that she was told to wait at home to be recalled to work. On August 10, the production manager, Louis Ng ("Ng"), called to ask her why she had not collected her pay cheque, and Li told him that Zhou had ordered her to wait at home to be called back to work. According to Li, she asked Ng when she could come back to work when she picked up her cheque on August 10. Ng said he would speak to Zhou. On August 12, Li called Ng again and asked about returning to work. He said that he had not spoken to Zhou. Li asked if she were the only employee not working. Ng said the supervisor, presumably Zhou, had said there was no work for her. According to Li, she then asked him to issue a Record of Employment (ROE) if the company did not want her to work, and he agreed immediately. Li testified that she had not received any negative comments on her work. When she received her ROE, she was not eligible for Employment Insurance, since she had exhausted her entitlement prior to coming to work at Stitches. The Director's delegate concluded that Zhou had suggested that Li take two weeks off because she was not feeling well.

The accounting manager, Phillip Hong ("Hong") issued an ROE with the code "D" to indicate the reason for issuing the Record, meaning that Li was sick. In a conversation with the delegate, Hong told the delegate that Zhou had told him that Li was terminated because of poor performance, due to her sickness related to pregnancy. According to Chan, Hong completed the ROE after asking the Employment Standards Branch for advice. In a written statement, Zhou said that because Li took sick leave on July 30, he concluded that her health was not good enough for her to work, and Li agreed that she should take a break. In a written statement to the Tribunal, Ng said that Li asked him for an ROE, as she felt sick and wanted to collect Employment Insurance.

Li stated that she was angry about the code because she had not been sick. She filed a complaint with the Human Rights Commission. During the investigation of her complaint, Virginia Grimaud ("Grimaud"), an analyst from the Human Rights Commission spoke to Hong. Li presented a copy of a note made by the analyst of that conversation. The note stated that Hong told Grimaud that he was instructed to enter the D code on the ROE because Li was ill due to her pregnancy. When he was told that this action would be illegal, Hong changed the form to indicate that Li had been discharged for poor performance during her probationary period.

Chan did not have direct knowledge of the events leading to Li's termination from Stitches. He became involved in the case when the Director's delegate began her investigation of Li's complaint. Although he alleged that Li's performance was poor, he did not provide any evidence to support that allegation. In particular, no direct evidence from Hong was available to the Tribunal.

**ANALYSIS**

Chan testified that Stitches did not discriminate against pregnant employees. At the time of the hearing, two other employees who were pregnant were still at work. Chan also argued that Li had asked to be terminated. The Determination in question did not find that Stitches discriminated against pregnant employees generally, but that Li's termination was due to her pregnancy.

Although the parties had different accounts as to why Li took July 13 and 30 off, both parties agreed that Stitches asked Li to take time off beginning July 31. The record also shows that Li asked Stitches on at least two occasions when she could return to work. Ng told her that she was the only employee who was not at work. Her behaviour was not consistent with a person who wanted to quit her employment. Moreover, Li had no motive to ask for an ROE stating that she was ill. Her uncontroverted evidence was that she had exhausted her Employment Insurance benefits prior to beginning work at Stitches, so she had no motive to prefer a "D" code on the ROE.

Overall, neither party presented any important evidence that was not available to the Director's delegate. In these proceedings, the appellant bears the onus of establishing that a determination was incorrect and should be cancelled. Stitches, as the appellant, did not present convincing evidence that the Determination was incorrect.

Section 126(4) of the *Act* states:

- The burden is on the employer to prove
- (a) that an employee is 15 years of age or older, or
  - (b) that an employee's pregnancy, a leave allowance by this Act or court attendance as a juror is not the reason for terminating the employment or for changing a condition of employment without the employee's consent.

The evidence in this case does not favour Stitches. Hong, on behalf of Stitches, stated on the ROE that Li was terminated because of her pregnancy. In addition, on the balance of probabilities, I find that Zhou told Hong that Li's performance problems were due to her pregnancy. No one discussed these concerns with Li. Since no evidence of Li's performance was available at the time of her termination, even this argument cannot be accepted. No direct evidence for any economic motive for terminating Li's employment was presented.

**ORDER**

For these reasons, the Determination of the Director's delegate of April 26, 1999 is confirmed. Li is entitled to \$1200, plus any interest accruing since the date of the Determination pursuant to Section 88 of the *Act*.

**Mark Thompson**  
**Adjudicator**  
**Employment Standards Tribunal**