

**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 -

Hua Mei (Canada) Overseas Investment Ltd.  
("Hua Mei")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 97/523

**DATE OF DECISION:** August 11, 1997

## DECISION

### OVERVIEW

This is an appeal, under Section 112 of the *Employment Standards Act* (the "Act"), by Hua Mei (Canada) Overseas Investments Ltd. ("Hua Mei") against a Determination which was issued by a delegate of the Director of Employment Standards on June 18, 1997. The Determination requires Hua Mei to pay the sum of \$2,071.28 to Dan Lu, a former employee, as he was found to be entitled to receive unpaid wages plus interest.

This decision has been made following a review and analysis of the Determination and the parties' written submissions.

### ISSUES TO BE DECIDED

Has Hua Mei contravened Section 21, Section 17 and Section 18 of the *Act*?

### FACTS

Dan Lu was employed by Hua Mei as "Assistant to Director" for the period of December 2, 1996 to February 28, 1997. He was dismissed on that date and was issued a Record of Employment (ROE) on March 3, 1997 which confirmed that he was dismissed. Mr. Lu was given a cheque dated February 28, 1997 in the amount of \$2,042.05 (net). This cheque represented his salary for the month of February, 1997 and 4% vacation pay based on his total earnings for the period of his employment. The cheque was returned by Mr. Lu's bank with "payment stopped" stamped on it.

Ms. Lin Qui Huang Dong, a director of Hua Mei, wrote to Mr. Lu on March 21, 1997 to inform him that she believed he had retained certain computer disks and business cards after his employment was terminated. She also noted that certain files which had been stored on the computer in Lu's office had been erased. Ms. Dong's letter concludes:

In order to protect us from any loss that may incur, please be informed that we have retained your last month pay cheque in our office. The cheque may be picked up by you in person upon your return of the said missing items and information.

Based on her investigation, the Director's delegate concluded that Mr. Lu had not received his salary for the month of February, 1997 nor his vacation pay. She also found that Hua Mei had contravened the following Sections of the *Act*: Section 17 (Paydays); Section 18 (Payment of wages if employment is terminated); and Section 21 (Deductions).

In its appeal, Hua Mei submits that the Determination is wrong, and gives the following reason:

The Director of Employment Standards (the “Director”) erred in law holding that the right of set off is not available under Section 21(1) of the *Employment Standards Act*. Accordingly, the director should not order the Appellant to pay the sum of \$2,071.28.

## ANALYSIS

The appeal by Hua Mei does not challenge the findings by the Director’s delegate concerning the contravention of Section 17 and Section 18 of the *Act*. For that reason, there are no grounds for me to disturb those findings by the Director’s delegate.

The reason given by Hua Mei for its appeal is that the Director’s delegate erred in finding that there had been a contravention of Section 21 of the *Act*.

Hua Mei alleges that Mr. Lu took “confidential information” and “valuable data” with him when his employment was terminated. It also alleges that he “erased all the company files stored in the computer.” Based on these allegations, Hua Mei argues that it is entitled to “set off” against Mr. Lu’s wages any loss or damages suffered by it because of Mr. Lu’s actions.

Section 21 of the *Act* states:

21. (1) Except as permitted or required by this Act or any other enactment of British Columbia or Canada, an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose.

(2) An employer must not require an employee to pay any of the employer's business costs except as permitted by the regulations.

(3) Money required to be paid contrary to subsection (2) is deemed to be wages, whether or not the money is paid out of an employee's gratuities, and this Act applies to the recovery of those wages.

I agree with the finding made by the Director’s delegate that Hua Mei has contravened Section 21 of the *Act*. I make this finding without making any finding concerning Mr. Lu’s alleged breach of his former employee’s policies or his allegedly unethical behaviour.

Section 21(1) of the *Act* prohibits an employer from withholding, deducting or requiring payment of all or part of an employee’s wages **for any purpose** except those permitted by statute.

It may be that Hua Mei has cause for legal action against Mr. Lu, but I expressly refrain from offering any opinion on that topic since my authority as an adjudicator is to apply and interpret the provisions of this *Act*. The proper course of action for Hua Mei to follow is to comply with the *Act* by paying Mr. Lu his wages and vacation pay. Hua Mei is not entitled to fashion its own remedy by attempting to “set off” against Mr. Lu’s wages whatever damages to which it believes it may be entitled.

**ORDER**

I order, under Section 115 of the *Act*, that Determination be confirmed.

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**

GC/nc