

An appeal

- by -

SBH Enterprises Ltd. operating as Shanghai Shin Ya Restaurant ("SBH")

- 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: Lorne D. Collingwood

FILE No.: 2001/293

DATE OF HEARING: July 11, 2001

DATE OF DECISION: July 16, 2001





DECISION

OVERVIEW

The appeal is by SBH Enterprises Ltd. operating as Shanghai Shin Ya Restaurant (who I will refer to as "SBH" and the "Appellant") pursuant to section 112 of the *Employment Standards Act* ("the *Act*") of a Determination issued by the Director of Employment Standards ("the Director") on March 20, 2001. The Determination is that SBH contravened sections 27, 28, 46 and 58 of the *Act* and it owes Jie Chen \$377.21 in statutory holiday pay, vacation pay and interest.

The Tribunal set a date for a hearing in the appeal. The Appellant failed to attend that hearing. The appeal has been dismissed pursuant to section 114 of the *Act*.

APPEARANCES:

Jie (Jenny) Chen On her own behalf

Steven Chan Interpreter

FACTS and ANALYSIS

The appeal was filed by Helen Ng. Helen Ng is a registered director of SBH and she holds the position of Secretary of the corporation. The Tribunal invited written submissions in respect to the appeal and, on receiving the Appellant's written submissions, it was decided that an oral hearing was necessary. By letter dated June 11, 2001, the parties were notified that the hearing would be held at 9:00 a.m. on July 11, 2001 and at Library Square, 8th Floor - 360 West Georgia Street in Vancouver.

The appellant did not appear at the hearing. Chen did attend the hearing, as did an interpreter as requested by Chen. I kept Chen waiting 30 minutes in the hope that someone representing the Appellant would arrive but it was to no avail.

It is now July 13, 2001. Nothing has been heard from the appellant. Neither Helen Ng, nor any other representative of SBH, has made an attempt to explain the Appellant's absence on the 11th.

I have read the appellant's written submissions and, having done so, it is not apparent to me that the Determination is in any way in error. It is not clear that the Canada Customs and Revenue Agency has decided that Chen was not an employee of SBH but, if so, it does not follow that the Determination must be cancelled. That is because the Director is not bound by decisions of that federal agency. The Director's delegate had to decide whether Chen did or did not fit the definition of "employee" as that term is defined by the *Act*.

The Tribunal may dismiss an appeal which is vexatious and/or not in good faith.

114 (1) The tribunal may dismiss an appeal without a hearing of any kind if satisfied after examining the request that

(c) the appeal is frivolous, vexatious or trivial or is not brought in good faith.

I am led to believe that this appeal is probably vexatious or not in good faith, or both. It is inconceivable to me that an appellant who is genuinely concerned by a Determination, and sincerely interested in an appeal, would not attend a hearing when one is set in its appeal and not then bother to offer some sort of explanation for its absence.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination dated March 20, 2001 be confirmed in the amount of \$377.21 and to that amount I add whatever further interest has accrued pursuant to section 88 of the *Act*.

Lorne D. Collingwood Adjudicator Employment Standards Tribunal