

An appeal

- by -

Stephanie Jang
("Jang")

- 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: James Wolfgang

FILE No.: 2002/194

DATE OF HEARING: June 20, 2002

DATE OF DECISION: September 9, 2002

DECISION

APPEARANCES:

Laura Finch for Island Bagel Company

Livingston Finch for Island Bagel Company

No one appeared for the Appellant

OVERVIEW

This is an appeal by Stephanie Jang (“Jang”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) of a Determination issued by the Director of Employment Standards (the “Director”) dated March 26, 2002. The Determination found Laura Finch operating as Island Bagel Company (“Island Bagel”) was not liable for payment of 4-hour minimum each day as Jang chose to either report for work late or leave early. The Determination also found Jang had been terminated for just cause and no compensation in lieu of notice was payable.

The oral hearing of the appeal was scheduled to commence at 10:00 am on June 20, 2002. A notice of oral hearing, dated February 15, 2001, was sent to the parties.

The notice contained a section, which read, “If the Appellant fails to attend the hearing, the Tribunal will consider the appeal to be abandoned”.

The Respondent was the only party to make an appearance. It is a policy of the Tribunal that Adjudicators wait 20 minutes for the Appellant. I waited over thirty minutes for the Appellant and when she failed to attend I declared that the appeal of Stephanie Jang was abandoned.

ISSUE

The issue is the matter of whether there is any reason to proceed further in this appeal given the Appellant’s failure to attend the hearing.

FACTS AND ARGUMENT

Jang claims she did not quit but was fired. Jang admits she had another job but claims she only left work early a couple of times and this was for personal reasons not related to her other job. She claims Island Bagel often sent her home before the end of her four-hour shift and that was the reason she claimed for four hours minimum pay. She believed she was entitled to four hours pay minimum for each day she started work and therefore marked four hours whether she worked them or not.

Jang also denies she was throwing trays around on her last day of work. She claims she was told by the owner to wash some trays as fast as she could and that was what she was doing.

Island Bagel claim Jang consistently left work early because she had another job as well as the part time work at Island Bagel. They claim Jang had the opportunity to come in earlier as the Head Baker started work at 4:00 am and she would be able to get the four hours work she was scheduled for.

Island Bagel claim Jang had been warned about recording the wrong hours and continued to report four hours. On the last day Island Bagel claim Jang wanted to leave early and her work was not completed. When Jang was told to finish her work she became angry and began slamming the baking trays into the sink. She was ordered to leave by the owner. Jang returned to the store at the end of the day and talked to the owner. The discussion became heated and Jang was asked what her intentions were. She was asked if she wanted to work there and her answer was “no”. She was asked if she quit and the answer was “yes”. Island Bagel indicated they were in the process of terminating Jang when she quit.

ANALYSIS

The Appellant in this case has alleged, on the appeal form and in written submissions, that the Determination contained an error in the facts, a different explanation of the facts and that there are other facts that weren't considered.

The written submissions are in conflict with each other. Therefore, the only way to test the evidence is under oath or affirmation and that the evidence be subjected to cross-examination. This is difficult to do without an appearance by the Appellant.

The Appellant has also alleged in her written submissions that the Delegate was biased in relation to the method in which she conducted the investigation. These are serious allegations, however, the Appellant did not include any particulars of this allegation of bias in the written submissions except to say the delegate did not meet with her directly.

Jang's sister wrote a very critical letter to the Tribunal making a number of accusations against Island Bagel. Without the benefit of a hearing where that evidence could have been tested by cross-examination it is difficult to give it much weight.

In an appeal the Appellant bears the onus to establish that the Delegate of the Director has committed errors in her conclusions that would be fatal to the Determination. As the allegations are based on a conflict in the facts, in essence the Respondent's story vs. the Appellant's story, it is difficult to review the evidence without an appearance by the Appellant and, as a consequence, this failure to appear proves fatal to the Appellant's case.

The appeal has been dismissed because Jang did not attend the hearing set in the appeal and did not provided a reasonable explanation for her absence.

ORDER

In accordance with Section 115 of the *Act*, I confirm the Determination dated March 26, 2002.

James Wolfgang
Adjudicator
Employment Standards Tribunal