

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-

Celter Commodities Inc. operating as
“Foody Goody Chinese Buffet Restaurant”

(“Foody Goody” or the “employer”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE NO.: 1999/444

DATE OF HEARING: October 8th, 1999

DATE OF DECISION: October 14th, 1999

DECISION

APPEARANCES

Sau Pak Choi	for Celter Commodities Inc.
Man-Chang Lau	on his own behalf
No appearance	for the Director of Employment Standards

OVERVIEW

This is an appeal brought by Celter Commodities Inc. operating as “Foody Goody Chinese Buffet Restaurant” (“Foody Goody” or the “employer”) 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 June 22nd, 1999 under file number ER 95-253 (the “Determination”).

The Director’s delegate determined that Foody Goody owed its former employee, Man-Chang Lau (“Lau”), the sum of \$1,184.34 on account of unpaid wages (statutory holiday pay, vacation pay and 1 week’s wages as compensation for length of service) and interest.

The employer’s appeal was heard at the Tribunal’s offices in Vancouver on October 8th, 1999 at which time I heard the testimony of Sau Pak Choi, an officer, director and principal shareholder of the employer, as well as Lau’s testimony. Lau’s evidence was given via a Cantonese interpreter. The Director was not represented at the appeal hearing.

ISSUES TO BE DECIDED

The employer submits that the Determination is incorrect in number of respects. In particular, the employer says that Lau was paid an hourly, rather than a monthly, wage and that Lau was paid both statutory holiday and vacation pay. The employer also says that since it gave verbal notice of termination, it is not liable to pay Lau any compensation for length of service. The employer also says that it ought to have been given a “credit” for free meals it provided to Lau.

I shall deal with each of these matters in turn.

FINDINGS

Compensation for Length of Service

Lau, who commenced employment with Foody Goody as a pastry chef on January 1st, 1998, says that he was terminated on December 31st, 1998 without any prior notice whatsoever. The parties agree that he was not paid any termination pay on December 31st or at any time thereafter.

Accordingly to Lau, on December 31st, he and the other assembled staff were told that the business--a Chinese buffet-style restaurant--was being closed effective the following business day.

Mr. Choi testified that at a staff meeting held on November 11th, 1998 he advised the assembled staff that the restaurant would be closed effective January 1st, 1999. Lau denied that such a meeting occurred; at the very least, he says he never attended, or was made aware of, any such meeting. While I have some doubts, as did the delegate, as to whether such a meeting took place, section 63 of the *Act* requires that *written* notice of termination be given and Mr. Choi concedes that no such written notice was ever delivered to Lau. Thus, given Lau's tenure--over 3 months but less than 1 year--he was entitled to 1 week's wages as compensation for length of service, the very sum awarded to him by way of the Determination.

The employer's appeal of the section 63 award is, therefore, entirely without merit.

Statutory Holiday Pay and Vacation Pay

While the employer says that Lau was paid an "hourly" wage, the employer's own wage statements indicate that Lau was paid a monthly salary of \$1,120 (except for February 1998) with half that amount being paid on the middle of each month and the other half at the end of the month. A wage statement, prepared by the employer, was attached to each of Lau's "end of month" payroll cheques; these statements refer to either a "monthly" or "semi-monthly" pay period for which a "salary" was paid. I accept Lau's evidence that he was paid a monthly salary for his work as a pastry chef.

Lau testified that he worked on various statutory holidays without any extra pay. Lau's wage statements (*i.e.*, the *employer's own documents*) confirm his evidence. Lau also says that he did not receive any vacation pay. Lau's wage statements--prepared and provided to him by the employer--do not itemize the payment of *any* vacation pay. In a letter to the delegate dated May 14th, 1999, the employer asserted that Lau's vacation pay was "paid by cash in lieu of vacation taken", however, there is no evidence before me of any such payments having been made by the employer to Lau and Lau denies having ever received such cash payments on account of vacation pay.

In sum, there is no credible evidence before me to show that Lau was paid either vacation pay or statutory holiday pay. Regarding this latter finding, I should note that it does not matter whether Lau was paid an hourly rate, or a monthly salary--either way, there is no credible evidence before me that Lau received any vacation pay or statutory holiday pay.

Finally, the employer claims some sort of "set-off" of its unpaid wage liability to Lau based on the fact that it provided Lau two meals (valued by the employer at \$2.50 per meal) each working day even though it appears that the meals were provided to all employees as a benefit. There is nothing before me to show that Lau agreed to reimburse the employer for the costs of these meals and, in any event, there is nothing in the *Act* permitting the sort of set-off that the employer seeks in this case.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$1,184.34**, together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal