

**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 -

Lotte Enterprises Ltd.  
operating as Pacific Northwest Language Studies  
(“PNW”)

- of a Determination issued by -

The Director of Employment Standards  
(the “Director”)

**ADJUDICATOR:** C. L. Roberts

**FILE No.:** 2000/622

**DATE OF DECISION:** November 29, 2000

## DECISION

This is a decision based on written submissions by Bruce Hee Yun on behalf of Lotte Enterprises Ltd., Edith Chang on her own behalf and Morley Greenman for the Director of Employment Standards.

### OVERVIEW

This is an appeal by Lotte Enterprises Ltd. operating as Pacific Northwest Language Studies (“PNW”), pursuant to Section 112 of the *Employment Standards Act* (“the Act”), against a Determination of the Director of Employment Standards (“the Director”) issued August 17, 2000. The Director found that PNW contravened Section 34 of the *Act* in failing to pay Edith Chang (“Chang”) minimum daily hours while she worked part time, and Ordered PNW to pay \$2,107.78 to the Director on Chang’s behalf.

### ISSUE TO BE DECIDED

At issue is whether the Director erred in finding that Chang was entitled to four hours pay for those days she worked 2.08 hours per day.

### FACTS

The facts, as found by the delegate and not disputed by Yun, are as follows.

PNW operates an English language school. There are 7 employees, consisting of three full time teachers, a part time teacher, and three administrative staff.

Chang was hired by PNW to work on a part time contract basis on May 26, 1999. She began working full time on September 27, and continued to work until December 17, 1999. On December 19, Chang was told that her contract would not be renewed due to decreased enrollment for the winter term.

Chang worked from 1:45 p.m. to 4:00 p.m. Monday to Thursday until she commenced working full time, at which time her hours were from 9:00 a.m. to 4:00 p.m. with one meal period of 1 hour fifteen minutes, and a 15 minute break. Chang was paid for 2.08 hours of work for each day worked on a part time basis.

Chang and PNW disagreed on whether Chang was required to stay after class, or had the option to leave. Chang contended she had no choice whether or not to stay or leave after class. PNW contended that Chang did have a choice.

The delegate interviewed another employee, Ms. Kitali, who held the same position as Chang. It was her evidence that she also worked 2.08 hours and was never paid for a minimum of 4 hours. Ms. Kitali, like Chang, had no employment contract indicating that she would leave after 2 hours,

or that she would be given the option of working 4 hours or less. Another employee, who wished to remain anonymous, confirmed that the part time employees were never told they could work 4 hours.

The Director's delegate determined that, since PNW had no evidence to show that Chang agreed to work less than four hours, Chang was entitled to four hours of pay per day worked that was less than four hours, plus statutory holiday and vacation pay on the unpaid amount.

## ARGUMENT

Mr. Yun argues that the *Act* does not apply to this employment situation, since Chang had the discretion to work in excess of two hours or to go home. He contends that, since Chang decided to leave work early, she was not entitled to receive wages for unworked time. Yun was of the view that if PNW had sent Chang home early, or work was not available, then the *Act* would apply.

Yun contends that Chang had more work available to her, the institution and facilities were open until 6:00 p.m. and that she should have remained at work until the school closed or she completed a four hour shift. He argues that he has fulfilled his obligations under the *Act* by offering Chang her four hours. He also states that "the agreement between PNW and Ms. Chang was that she would utilize the extra two hours for other curriculum purposes. If Ms. Chang does not use these hours to her own benefit then the agreement between PNW as an Employer and Ms. Chang as an Employee does not apply" to the *Act*. He also contends that, in addition to her teaching duties, "Ms. Chang was required to fulfil her teaching duties by engage in extra-curricular development or teaching additional classes - our facilities are open until 6:30 everyday".

Mr. Yun further contends that Chang was aware of the fact that additional hours were available to her, and she chose to leave early. He also suggested that Chang should have approached him earlier on this issue, and the fact that she did not is unethical.

Chang contends that there were no classes past 4:00 p.m., and that Mr. Yun never asked her to stay past that time. She notes that the time sheets have no place to document hours worked past 4:00 p.m. Chang also argues that she could not have stayed past 4:00 p.m. marketing the school or working on extra conversation classes, since she had no marketing skills, and the conversation classes were taught by volunteers. In addition, she contends that the duties of curriculum development were the responsibility of the academic co-ordinator, not the teachers.

## ANALYSIS

The burden of establishing that the Determination is incorrect rests with an Appellant. Having reviewed the submissions of the parties, I am not persuaded that the Director erred.

Section 34 of the *Act* provides as follows:

- (1) *If an employee reports for work on any day as required by an employer, the employer must pay the employee for*

- (a) *at least the minimum hours for which the employee is entitled to be paid under this section, or*
  - (b) *if longer, the entire period the employee is required to be at the workplace.*
- (2) *An employee is entitled to be paid for a minimum of*
- (a) *4 hours at the regular wage, if the employee starts work unless the work is suspended for a reason completely beyond the employer's control, including unsuitable weather conditions, or*
  - (b) *2 hours at the regular wage, in any other case...*

This section, which is a minimum requirement, provides that, once an employee reports to work, the employer must compensate the employee for 4 hours pay at regular wages.

An employer must arrange its affairs to that there is sufficient work for the employee to do. The employer must pay the statutory requirement, or not require the employee to report to work. (*Hintz (Re) BC EST #D382/98*).

The weekly time sheet used by PNW show that an employee is to record “contact hours” between 9:00 a.m. and 4:00 p.m. There is no indication that an employee is to work until 6:30 p.m.

PNW argues that the agreement between the parties provided that Chang would utilize the additional two hours (i.e., between 4:00 p.m. and 6:00 p.m.) for other curriculum purposes. No written agreement was provided to support this argument, either to the delegate or on appeal. Chang and other employees deny that such an agreement existed. Chang’s evidence that she is unqualified to perform this work in any event was not disputed by Yun.

I find no basis on which to find that the delegate erred, and dismiss the appeal.

**ORDER**

I Order, pursuant to Section 115 of the *Act*, that the Determination, dated August 17, 2000 be confirmed, together with whatever interest has accrued since that date.

***C. L. Roberts***

---

**C. L. Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**

CLR/bls