

An appeal

- by -

Lotte Enterprises Ltd. operating as Pacific Northwest Language Studies
(the “Employer” or “Lotte Enterprises”)

- 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: Ib S. Petersen

FILE No.: 2001/573

DATE OF DECISION: November 2, 2001

DECISION

SUBMISSIONS

Mr. Bruce Yun	on behalf of Lotte Enterprises
Ms. Lisa Katai	on behalf of herself
Mr. Morley Greenman	on behalf of the Director

OVERVIEW

This matter arises out of an appeal by the Employer pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination of the Director issued on July 16, 2001. The Determination concluded that Katai was owed \$2,192.83 by the Employer on account of minimum daily hours.

FACTS AND ANALYSIS

The Employer appeals the determination. The Employer, as the appellant, has the burden to persuade me that the Determination is wrong.

The Employer operates a language school. Katai worked there as an instructor from September 8, 1998 to June 30, 2000 at the rate of \$17.00 per hour. She was originally hired on a part-time basis and became a full-time instructor on May 25, 2001. The delegate found that during the time she was employed on a part-time basis, she worked only 2 1/4 hours on her scheduled days of work.

Before the Delegate, the Employer took the position that it gave Katai every opportunity to work after her classes up to the four hour daily minimum and that Katai did not want to work these hours. Katai denied that. The Delegate interviewed various witnesses provided by the employer and Katai, and concluded that, in fact, Katai was not given the opportunity to work over and above her 2 1/4 hours. He concluded that, even if there was an agreement between Katai and the Employer that she only work those hours, that agreement contravened Sections 34 and 4 of the *Act*.

In the appeal, the Employer largely reiterates its position before the Delegate, namely that Katai was given the opportunity to work the four hours daily minimum and that she voluntarily decided not to work more than 2 1/4 hours. As well, he takes issue with and elaborates on some of the statements made by the witnesses.

The appeal is opposed by the Delegate and Katai.

I am of the view that the Employer has not discharged the burden on the appeal. Even if the Employer is correct in its factual assertion--and there is a dispute in that respect--that Katai agreed to work only 2 1/4 hours on her scheduled days of work, section 34 provides for four hours minimum daily pay. In my view, an employee cannot waive her statutory rights (Section 4). Any such a agreement is of no effect. Briefly put, I am of the view that the Employer has failed to show that the Delegate erred and the appeal is, therefore, dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated July 16, 2001, be confirmed.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal