

An appeal

- by -

Happy Video & Electronics Ltd.
("Happy Video")

- 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: Norma Edelman

FILE No.: 2001/709

DATE OF DECISION: November 28, 2001

DECISION

OVERVIEW

This matter arises out of a referral back to the Director of Employment Standards (the "Director") to recalculate the amount of wages owed by Happy Video and Electronics Ltd. ("Happy Video") to Daniel Tong ("Tong") [see my earlier decisions *Happy Video and Electronics Ltd.* BC EST #D386/01 and BC EST #D215/01].

On October 9, 2001, the Tribunal received a report from a delegate of the Director dated October 5, 2001. The delegate said he recalculated the amount owing to Tong as per my instructions and had forwarded his calculations to the parties. He said he received a response from Tong and adjusted his calculations in accordance with Tong's comments. He said the company did not respond and as a result he has accepted that it does not dispute his calculations. The delegate determined that Tong was owed \$18,091.19, including interest, by Happy Video.

The Tribunal forwarded the delegate's report to Happy Video and Tong on October 12, 2001. They were invited to reply to the report and they were advised that their response should specify their reasons for agreeing or disagreeing with the calculations. An information sheet on the referral back process was enclosed with the Tribunal's letter. The information sheet stated that the Tribunal may decide the matter based solely on the written submissions of the parties and that an oral hearing may not necessarily be held and further, that the Determination would either be confirmed, varied, cancelled or referred back to the Director.

The Tribunal received a reply from Tong dated October 31, 2001 stating he agreed with the delegate's calculations. The Tribunal also received a reply from Victor Que ("Que"), on behalf of Happy Video, dated November 1, 2001. Que does not address the delegate's calculations, nor does he challenge the delegate's position that Happy Video does not dispute his calculations. Rather, Que focuses on the substantive issues and reasons why Happy Video is not liable to pay any wages to Tong. However, the substantive issues are not before at this time. Those issues were decided in my first decision (see *Happy Video and Electronics Ltd.* BC EST #D215/01). The only matter before me now is *quantum*. That is, are the delegate's calculations correct or not. Once the issue of *quantum* is finalized, then Que may apply for a reconsideration of my first decision.

This matter has been decided based on the written submissions of the parties.

I have reviewed the delegate's calculations, which are accepted by Tong and not challenged by Happy Video, and I find no reason to conclude that they are in error. Accordingly, I accept that Tong is owed the amount calculated by the delegate in his report dated October 5, 2001.

ORDER

Pursuant to Section 115 of the *Act* and further to Tribunal Decisions BC EST #D386/01 and BC EST #D215/01, I order that the Determination dated November 29, 2000 be varied to the amount of \$18,091.19, plus any other interest accumulated pursuant to Section 88 of the *Act*.

Norma Edelman
Vice-Chair
Employment Standards Tribunal