

An appeal

- by -

Zai Cheng Wei

- 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:** David B. Stevenson

**FILE No.:** 2001/750

**DATE OF DECISION:** December 20, 2001

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Zai Cheng Wei of a Determination that was issued on July 13, 2001 by a delegate of the Director of Employment Standards (the “Director”).

Zai Cheng Wei was one of twenty persons who had filed complaints with the Director under the *Act* alleging they were owed unpaid wages, annual vacation pay and length of service compensation from their former employer, Fetchomatic.Com Online Inc. and/or Fetchomatic Global Internet Inc. (“Fetchomatic”). The Determination associated Fetchomatic with Fetchomatic Global Internet Inc. under Section 95 of the *Act*, concluded the associated companies had contravened Part 3, Section 18, Part 7, Sections 57 and 58 and Part 8, Section 63 of the *Act* in respect of the twenty former employees, ordered the associated companies to cease contravening and to comply with the *Act* and its requirements and to pay a total amount of \$126,055.66. The Determination concluded that Zai Cheng Wei, individually, was owed an amount of \$5,794.81.

Zai Cheng Wei says that conclusion is wrong and that he is, in fact, owed \$7,307.76. The difference, \$1,512.95, is the amount of a cheque for wages that was issued to Zai Cheng Wei by Fetchomatic, but which was returned NSF and not included in the Determination calculation.

The Director agrees that the amount of the NSF cheque should have been included in the Determination and, in response to the appeal, has recalculated the amount owing to Zai Cheng Wei to show a total amount owing of \$7,629.20, which is comprised of the amount of \$7,307.76 claimed by Zai Cheng Wei, plus 4% vacation pay and interest on that amount pursuant to Section 88 of the *Act* to the date of the Determination.

### ISSUE

The issue in this appeal is whether Zai Cheng Wei has demonstrated the Determination is sufficiently wrong in its conclusion about the amounts owed to justify the Tribunal exercising its authority under Section 115 of the *Act* to vary it.

### FACTS

Zai Cheng Wei was employed by Fetchomatic from November 28, 2000 to June 7, 2001 as an ASP programmer. Along with many other employees, Zai Cheng Wei was terminated when the location of Fetchomatic at which he was working closed. In order to secure any available assets, the Director dealt with the many complaints and issued the Determination as quickly as possible. In the Determination, the Director acknowledged the possibility of errors and omissions because the investigation was conducted expeditiously.

Zai Cheng Wei has provided material showing the Determination did not include the amount of the NSF cheque and the Director agrees that amount should have been included in the Determination.

Fetchomatic has not filed a reply to the appeal.

### **ARGUMENT AND ANALYSIS**

The burden is on Zai Cheng Wei in this appeal to persuade me that the Determination is wrong in law, in fact or in some combination of law and fact (see *Re World Project Management Inc.*, BC EST #D134/97 (Reconsideration of BC EST #D325/96)). An appeal before the Tribunal is not a re-investigation of the complaint. It is a proceeding to decide whether there is any error in the Determination, as a matter of fact, as a matter of law or as a matter of mixed fact and law, sufficient to justify intervention by the Tribunal under Section 115 of the *Act*.

The appeal alleges an error in a conclusion of fact. In such a case, Zai Cheng Wei must show that the conclusion of fact was either based on wrong information, that it was manifestly unfair or that there was no rational basis upon which the factual conclusions could be made (see *Re Mykonos Taverna, operating as the Achillion Restaurant*, BC EST #D576/98).

In this appeal, I am satisfied that Zai Cheng Wei has met the burden and that a variance of the Determination to show the wages owed to him as \$7,639.20 is justified.

### **ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated July 13, 2001 be confirmed to show the wages owed to Zai Cheng Wei to be the amount of \$7,639.20, together with any interest that has accrued pursuant to Section 88 of the *Act*.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**