

**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 -

UAP Inc. operating as TW Distribution  
(“UAP or employer”)

- of a Determination issued by -

The Director Of Employment Standards  
(the “Director”)

**ADJUDICATOR:** Paul E. Love

**FILE NO.:** 98/664

**DATE OF DECISION:** January 8, 1999

## DECISION

### OVERVIEW

This is an appeal by UAP Inc. (“UAP or employer”) of a Determination dated October 16, 1998. The Delegate was investigating a complaint under the *Act* concerning overtime wages alleged to be due and owing to a former employee. The Delegate assessed a penalty of \$550.00 for the employer’s failure to produce payroll records demanded.

### ISSUES TO BE DECIDED

Was the penalty assessed properly by the Director’s delegate?

### FACTS

The Director received a complaint from an employee, Jackson R. Barrie, concerning non-payment of overtime wages. On August 19, 1998 the employer made a commitment to produce to the Director’s delegate time records and payroll records related to the employee. The employer did not follow through on the commitment. On September 25, 1998 the Delegate issued a demand for records, pursuant to Section 85(1)(f) of the *Act*. This was sent to the employer by registered mail and was received by the employer. The Demand required the employer to produce the records by October 9, 1998. The employer failed or neglected to produce the records by the time allotted.

On October 6, 1998 the employer filed a submission with the Director’s delegate arguing that no wages were owing to the employee, but the employer failed to supply the records. A second demand was made for the records on October 21, 1998 requiring production of the records by November 4, 1998. The employer filed its appeal on October 19, 1998 and provided some documents to the Delegate on October 23, 1998. The documents provided on the 23rd failed to comply with the *Act*, as these did not include time records for the employee.

The employer filed with this Tribunal a letter dated October 8, 1998 directed to the Delegate alleging that the records had been sent. In her submission to the Tribunal, the Director’s delegate denied receiving the October 8, 1998 letter. The Director’s delegate has indicated in her submission to the Tribunal that the investigation has been delayed or frustrated by the employer’s non-compliance with the *Act*, and that therefore, a penalty is appropriate. The penalty was assessed at \$500.00.

### Employer’s Argument

The employer says that it took the following steps in order to comply with the demand:

Listed are the steps and dates which we complied to the request.

- |                  |  |
|------------------|--|
| October 6, 1998  | Faxed letter to Lynne L. J. B.. Egan regarding our side of the situation and Advised that we would be forwarding back-up as soon as we received it from our head office in Montreal. |
| October 8, 1998  | Received back-up from Montreal. Another letter was then drafted and enclosed with the supporting 67 pages of documentation.  |
| October 9, 1998  | This entire package was picked up with our regular mail and assumed delivered.   |
| October 19, 1998 | Received you Determination.  |

### **ANALYSIS**

In this case, the burden is on the employer to demonstrate an error in the Determination such that I should cancel or vary the Determination. There is no issued raised concerning the relevancy of the records sought or proper service of the Demand.

In analyzing the documents presented, I find that the October 6, 1998 letter from the employer to the Director's delegate is a submission which did not contain supporting documents. The fax cover sheet from the employer to the Delegate, October 6, 1998 promises enclosures to follow. No documents were received by the Delegate prior to the October 9, 1998 deadline.

There was also some suggestion in the employer's submission to this Tribunal dated October 19, 1998 that it was awaiting information from Montreal, and that forwarded the information received from Montreal to the Director's delegate on October 9, 1998. There is no support for the employer's submission that it was awaiting information from Montreal, nor any support for the employer's assertion that it sent 67 pages of documentation to the Delegate. The Delegate denies receiving such information, and denied receiving the letter dated October 8, 1998 which the employer alleged it provided to the Delegate. The only enclosure attached to the October 8, 1998 letter is a 3 page evaluation of the employee's performance. I am not persuaded that the employer attempted to simply with the demand before the time expired for production of the records.

The Act was designed to provide a fair and efficient procedures for resolving dispute between employer and employees concerning the interpretation of the *Act*. In order to get to the heart of the matter, the *Act* gives to the Director the power to make demand for production of documents. The employer has not suggested that the documents sought were not relevant to the inquiry.. While an employer must be given a reasonable time for production of documents was afforded to the employer.

It is my finding that there was no reasonable excuse by the employer for failing to produce the records as requested. Section 28 of the *Regulation* establishes a penalty of \$500.00 for each contravention of Section 28 of the *Act* and Section 46 of the *Regulations*. There is no discretion concerning the amount of the penalty. The Determination did set forth, with clarity, the reasons why the penalty was being imposed, and the statutory sections on which the Director relied. The employer remained in breach of its obligations to produce records up and until the dated that it filed its appeal.

The employer had failed to meet the onus on it these proceedings to demonstrate any error made in the imposition of the penalty.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter, dated October 16, 1998 be confirmed.

**Paul E. Love**  
**Adjudicator**  
**Employment Standards Tribunal**

PL:sa