BC EST #D003/98

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 -

Glenwood Label & Box Mfg.. Ltd.
(the "Employer")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE NO.: 97/660

DATE OF DECISION: January 6, 1998

DECISION

OVERVIEW

This is an appeal brought by Glenwood Label & Box Mfg.. Ltd. (the "Employer") pursuant to Section 112 of the *Employment Standards Act* (the "*Act*") against a Determination issued by a Delegate of the Director of Employment Standards on August 6, 1997. The Determination found that the Employer had violated Section 28 of the *Act* by failing to keep records pertaining to the hours worked by an employee on each day and imposed a penalty of $500 under Section 28 of the *Employment Standards Regulation*. The Employer appealed the Determination on the grounds that its records complied with the requirements of the *Act.* The appeal was decided on the basis of written records submitted by the Employer and the Director.

ISSUE TO BE DECIDED

Did the Employer's records comply with Section 28 of the *Act*?

FACTS

The facts behind this case turn on the employment record of Ms. Cheryl Vannatter ("Vannatter"), who worked for the Employer until approximately January 29, 1997 as a Customer Service Representative. Previously, she had been employed as a Print Production Manager. There seems to be no disagreement between the Director and the Employer that when the department in which she worked was closed, the Employer offered her the Customer Service Representative position, effective November 1, 1996. The Customer Service Representative position attracted the same compensation as her previous position, a monthly salary of $2080. Vannatter and the Employer agree that she received a letter from a Vice President of the Employer dated November 1, 1996 concerning her new position. The letter described the duties as a Customer Service Representative, referred to a quarterly performance review and a performance bonus. It concluded:

> To confirm, you will remain a salaried employee and will be expected to fulfill your workdays accordingly as you did in your prior position with the company.

The Employer submitted a second letter to Vannatter dated July 4, 1997 in evidence to the Tribunal. The letter to Vannatter informed her of the change of position, and further stated:

None of our salaried employees punch a time clock or report their hours worked. Salaried employees are basically left on their own to ensure they put in their day's work. Her official hours of work were:

as Print Production Manager	8:00 am to 5:00 pm
as CSR (to start)	8:00 am to 4:30 pm
as CSR (later on)	8:00 am to 5:00 pm

Vannatter stated that she received the November 1, 1996 letter, but not the July 4, 1997 letter. While there is at least one typographical error in the "July 4, 1997" letter, referring to a starting date as a Customer Service Representative of November 1, 1997, the date on the second letter is several months after Vannatter ceased to be an employee of the Employer.

The substance of Vannatter's complaint was that she worked from 8:00 a.m. to 5:00 p.m. during her employment as a Customer Service Representative from May 8, 1996 through January 29, 1997, i.e., one half an hour of overtime each day. She further stated that she had never worked the 8:00 a.m. to 4:30 p.m. schedule set out in the July 4, 1997 letter.

On Jule 19, 1997, the Director's Delegate issued a Demand for Employer Records concerning Vannatter's employment. The Employer replied by submitting a number of documents which consisted of an entry for Vannatter on a memorandum form for each semi-monthly pay period for the time in question. There was an entry "Wage $1040," for each sheet. On several occasions, there were additional entries to reflect statutory holidays, days not worked, vacation pay and the like.

The Director's Delegate referred to the memorandum forms as "pay stubs," and she issued the Determination in question imposing the penalty for failure to comply with Section 28 of the *Act*.

ANALYSIS

The Employer's argument is that the documents it submitted in response to the Demand for Employer Records are not "pay stubs," but a summary of the semi-monthly payroll. The Comptroller of the Employer, in the Employer submission to the Tribunal stated that he could examine the documents "knowing the hours of work for the employee" and determine the hours worked each day. He further stated:

If the employee worked less than a full shift, it is indicated. If there is no indication of any deviation from the regular hours of work, then the payroll summary reflects this.

Section 28 of the *Act* addresses the issue of payroll records as follows:

(1) For each employee, an employer must keep records of the following information:

(a) the employee's name, date of birth, occupation, telephone number and residential address;

(b) the date employment began;

(c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis;

(d) the hours worked by the employee on each day, regardless of whether the employee is paid on an hourly basis;

(e) the benefits paid to the employee by the employer;

(f) the employee's gross and net wages for each pay period;

(g) each deduction made from the employee's wages and the reason for it;

(h) the dates of the statutory holidays taken by the employee and the amounts paid by the employer;

(I) the dates of annual vacation taken by the employee, the amounts paid by the employer and the days and amounts owing;

(j) how much money the employee has taken from the employee's time bank, how much remains, the amounts paid and dates taken.

On their face, the records submitted by the Employer in this case did not include the information required for Subsections (d) through (g). In particular, they did not contain any information with which the Director's Delegate could verify the substance of Vannatter's complaint. While the Employer's appeal asserted that the Comptroller could determine the hours Vannatter actually worked, the documentation did not deal with hours worked "each day" as the law requires. Rather the calculation was based on two standard work weeks for each pay period. The format may have enabled the Employer or the Director's Delegate to calculate the number of days worked, it did not contain any information on the number of hours worked on any given day or even over a pay period. It is precisely this information that is necessary for the Director to make a determination based on fact in

respect of a complaint that the provisions of the *Act* regarding hours of work have been violated.

After reviewing the evidence, I conclude that the information submitted by the Employer did not meet the requirements of Section 28 of the *Act.*

ORDER

For these reasons, pursuant to Section 115 of the *Act,* I order that the Determination dated August 6, 1997 be confirmed.

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Mark Thompson
Adjudicator
Employment Standards Tribunal