

An appeal

- by -

CityLink Bus Lines Ltd.
("CityLink" or the "Employer")

- 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: Paul E. Love

FILE No.: 2002/538

DATE OF DECISION: January 15, 2003

DECISION

OVERVIEW

This is an appeal by an employer, from a Determination dated October 3, 2002 (the “Determination”) issued by a Delegate of the Director of Employment Standards (“*Delegate*”) pursuant to the *Employment Standards Act, R.S.B.C. 1996, c. 113* (the “*Act*”) imposing a penalty on the Employer for a violation of the *Act*. In an earlier decision, CityLink Bus Lines Ltd., BCEST # D015/03, I confirmed a Determination, finding that Mr. Rai was entitled to wages, and that the Employer breached section 18(2), of Part 3 of the *Act*. Section 18(2) is a specified provision, set out in Appendix 2 of the *Employment Standards Regulation, B.C. Reg. 396/95* (“*Regulation*”), and the specified penalty for a third offence is \$250 per affected employee. Here, the penalty Determination outlined in sufficient detail the allegation made. The Employer has shown no error in the penalty determination, and therefore I confirmed the Determination.

ISSUE:

Did the Delegate err in assessing a penalty in the circumstances of this case?

FACTS

I decided this case after considering the written submission of the Employer, Employee and the Delegate. In an earlier decision, I confirmed a Determination finding that Mr. Rai was entitled to wages for working for CityLink Bus Lines Ltd., an intra-provincial bus line: CityLink Bus Lines Ltd., BCEST # D015/03. This was a breach of section 18(2), of Part 3 of the *Act*. The Delegate imposed a penalty of \$250.00 as this was the “third time CityLink Bus Lines Ltd., has contravened Part 3 of the *Act*”. In the Determination, the Delegate referred to the following earlier violations:

June 6, 2002 Contravened Part 3 Section 18(2) and Part 7, Section 53(3) five times \$750.00

The Delegate assessed the penalty to “emphasize the importance of compliance with the *Act* and *Regulation*”.

Employer’s Argument:

The Employer filed an appeal alleging that there was an error in the facts, an error in interpreting the law, and a different explanation of the facts. The Employer asks the Tribunal to cancel the Determination. The Employer does not respond to or deny the allegation of earlier infringements of the *Act*, and there are no submissions directed specifically against the penalty determination.

Delegate’s Argument

The Delegate submits that this is the third violation of Part 3 of the *Act* an escalating penalty is necessary in order to provide a financial incentive to the Employer to comply with the *Act*.

ANALYSIS

In an appeal under the *Act*, the burden rests with the appellant, in this case, the Employer, to show that there is an error in the Determination, such that the Determination should be canceled or varied.

The penalty imposed in this case is for a breach of Part 3 of the *Act*, and in particular section 18(2) - payment of wages where employee quits. The Delegate notes that this is the third violation of Part 3 of the *Act*, by this Employer. Section 18(2) of the *Act* is a specified penalty provision listed in Appendix 2 of the *Employment Standards Regulation, B.C. Reg. 396/95* (“*Regulation*”). Pursuant to section 29(2)(c) of the *Regulation*, the penalty for a third violation of the specified provision is \$250.00, given that only one employee was affected by the breach of the provision. The terms of section are set out below:

\$250 multiplied by the number of employees affected by the contravention, if the person contravening the provision has contravened a specified provision of that Part on 2 previous occasions.

I note that the Determination, while brief, sets out the reasons for the imposition of the penalty with sufficient detail in order for the Employer to have no doubt of the nature of the allegation made: Westminster Chevrolet Geo Oldsmobile Ltd., BCEST #D210/97.

I see no error in the penalty determination, and therefore dismiss the appeal.

ORDER

Pursuant to s. 115 of the *Act* the Determination dated October 3, 2002 is confirmed

Paul E. Love
Adjudicator
Employment Standards Tribunal