

**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 -

First Nations Artists Corporation  
("FNAC")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorna Pawluk

**FILE NO.:** 97/752

**DATE OF DECISION:** February 11, 1998

## DECISION

### OVERVIEW

This is an appeal by First Nations Artists Corporation (“FNAC”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against a Determination dated September 24, 1997 by the Director of Employment Standards (the “Director”).

### ISSUE TO BE DECIDED

The issue is whether the Director correctly found FNAC in Breach of Section 28 of the *Act*.

### FACTS

On September 24, 1995, the Director’s delegate found that FNAC breached the Act by failing to keep records of hours worked by the employee Kristina House. On June 19, 1997, the delegate had issued a Demand for Employer Records and on July 7, 1997, certain records were delivered to the delegate. Some records were produced but not a record of the hours worked by House. June Bernard, on behalf of the employer, told the delegate that no such records were kept for House. The delegate ordered FNAC to cease this violation and imposed a penalty of \$500.00.

### ANALYSIS

Section 28 of the Act requires an employer to keep certain employment records for each employee. Section 28(1)(d) calls for information on “the hours worked by the employee on each day, regardless of whether the employee is paid on an hourly or other basis”. Bernard admitted that no such records were kept about House.

Attached to the Notice of Appeal was a statement by the appellant that “a variance system of recording employee’s hours of work by recording the employee’s absences from work was maintained ...”. Mr. Ages on behalf of the Director, responds by saying that the requirements of Section 28 are clear and that the employer failed to produce records as demanded.

I agree that the demands of Section 28 are not clear that an employer is obliged to keep a record of employee hours. The section does not specify how that is to be done, only that some record be kept at the employer’s principle place of business in the province for seven years after the termination of employment. The manner of recording is left to the employer’s discretion. However, a record of employee absences deals only with the days an employee is away and does not specify which hours were worked. Thus, it is

insufficient to comply with the requirements of Section 28(1)(d). I find that the \$500.00 was properly imposed by the Determination.

**ORDER**

Pursuant to Section 115 of the Act, I confirm the Determination in this matter, dated September 24, 1997.

**Lorna Pawluk**  
**Adjudicator**  
**Employment Standards Tribunal**

LP:sr