

An appeal

- by -

B.R. Enterprises Ltd.  
("B.R.")

- 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* (as amended)

**TRIBUNAL MEMBER:** Carol L. Roberts

**FILE No.:** 2007A/161

**DATE OF DECISION:** February 14, 2008



dealing with had taken a long time in setting up the direct payment system and that BR's failure to comply was beyond her control. She explained that, in the meantime, she had been paying the workers on time by cheque.

8. The delegate found BR's response insufficient because it did not deny that it had failed to comply with the *Regulation*. The delegate concluded that BR was aware of the requirements of the *Act* and the *Regulation* as it had completed the farm labour contractor licensing process. BR's directors were required to pass a written examination to satisfy the director of their knowledge of the *Act* and *Regulation* and to complete an interview process designed to ensure their understanding of the licensing requirements, including one about the payment of employees by direct deposit. The delegate found that BR had contravened the *Regulation*.
9. The Brars acknowledged that, when they started the company, they were advised of the direct deposit requirement. They repeated the information they provided to the delegate, which was a recitation of the difficulties they encountered with the bank in establishing the direct deposit accounts. As I understand their submission, they say they called Employment Standards Branch to advise them of the difficulties they were encountering and what they were doing about those difficulties, including paying the employees by cheque. They say the Branch told them this was "OK", and that they were to call the Branch when it was established. They say that despite calling the bank repeatedly about the direct deposit account, the bank did not respond to their requests. They say they eventually established a direct payment account through another company and challenge the \$500 administrative penalty.
10. Attached to BR's appeal is a letter from the Royal Bank dated December 21, 2007 stating that BR tried to establish direct deposit with it. The letter states that  

after receiving all required information for BR Enterprise employees, ADP took longer than expected time to deliver their service due to a lack of communication. BR Enterprises was then forced to withdraw their application form ADP and have Ceridain take over.
11. The delegate submits that all of BR's arguments were considered but found irrelevant. The delegate notes that BR acknowledged that they were aware of the responsibility to set up direct deposit and to pay all the employees this way. The delegate submitted the payroll records for the period ending September 8, 2007 for one employee and the corresponding cheque to the employee for that period, demonstrating the contravention of the *Regulation*. The delegate asked that the appeal be denied.

## ANALYSIS

12. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
  - (a) the director erred in law
  - (b) the director failed to observe the principles of natural justice in making the determination; or
  - (c) evidence has become available that was not available at the time the determination was being made
13. The burden of establishing the grounds for an appeal rests with an Appellant.

14. BR's appeal document does not describe how it was denied natural justice. In *JC Creations* (BC EST #RD317/03), the Tribunal concluded that, given the purposes and provisions of the legislation, it is inappropriate to take an "overly legalistic and technical approach" of the appeal document: "The substance of the appeal should be addressed both by the Tribunal itself and the other parties, including the Director. It is important that the substance, not the form, of the appeal be treated fairly by all concerned."
15. As a result, I have not limited the grounds of appeal to that identified by the appellant. Nevertheless, the appeal document must disclose an appealable issue. A disagreement with the result, in and of itself, is not a ground of appeal. An appeal is not an opportunity to re-argue a case that has been advanced before the delegate.
16. I am not persuaded that the appeal has merit. There is nothing in the appeal submission that is substantively different than what was provided to the delegate.
17. BR has not established a reviewable error of law (*Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)* (1998] B.C.J. (C.A.)). It has also not established that the delegate failed to advise it of their observations about the failure to pay by direct deposit.
18. The delegate considered BR's response in determining that it had contravened the *Regulation*. Indeed, BR acknowledged the contravention. It offered an excuse for the contravention that the delegate considered insufficient.
19. BR is of the view that the penalty assessment is unfair in the circumstances. However, in *Douglas Mattson* (BC EST #DRD647/01) the Tribunal found that it could not ignore the plain meaning of the words of a statute and substitute its view of the legislative intent based solely on its judgement about what is "fair" or "logical". Further, in *Actton Super-Save Gas Stations Ltd.* (BC EST #D067/04) the Tribunal concluded that the Act provides for mandatory administrative penalties without any exceptions: "The legislation does not recognize fairness considerations as providing exceptions to the mandatory administrative penalty scheme."
20. Once the delegate finds a contravention, there is no discretion as to whether an administrative penalty can be imposed. Furthermore, the amount of the penalty is fixed by *Regulation*. Given that BR acknowledged the contravention, I find no error in the delegate's conclusion and dismiss the appeal.

## **ORDER**

21. I Order, pursuant to Section 115 of the *Act*, that the Determination, dated November 30, 2007, be confirmed.

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**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**