

**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-

Leah Piete  
("Piete")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	C. L. Roberts
<b>FILE NO:</b>	98/805
<b>DATE OF DECISION:</b>	February 5, 1999

## DECISION

This is a decision based on written submissions by Leah Piete, and A. H. Brulotte for the Director of Employment Standards.

### OVERVIEW

This is an appeal by Leah Piete ("Piete"), pursuant to Section 112 of the *Employment Standards Act* ("the *Act*"), against a Determination of the Director of Employment Standards ("the Director") issued November 26, 1998. The Director found that Piete contravened Sections 27(1) and 28(1) of the *Act* in failing to produce proper payroll records without reasonable explanation, and Ordered that Piete pay \$500.00 to the Director for the contravention.

### ISSUE TO BE DECIDED

Whether the Director correctly exercised her discretion in assessing a penalty for failing to provide employment records without reasonable explanation.

### FACTS

Shirley Cook filed a complaint with the Director regarding unpaid wages and overtime wages. During the investigation of the complaint, the Director's delegate served Piete with a Demand for Records under Section 85(1)(f) of the *Act*. Records were to be provided by July 8, 1998.

On July 13, the Director received a letter from Piete which indicated that she had no records to provide. The letter read in part as follows:

The primary reason for this being I was completely unaware that the informal arrangements I made with Ms. Cook required I do so. It was yourself who informed me of this regulation. I believed I was responsible only for carrying out my end of the agreements made with Ms. Cook, upon her moving onto our property....While I do not have records as you request, I am in the process of compiling a report that outlines my position regarding Ms. Cook's claims. As much as possible, after the fact, I will substantiate my position with supporting documentation."

Nothing further was received.

The Director's delegate found Piete in contravention of Section 46 of the *Employment Standards Regulations*, and imposed a \$500.00 penalty, pursuant to Section 28 of the *Regulation*.

The Determination stated as follows:

No reasonable explanation for the failure to deliver was given. If one had been given, the Director would have exercised her discretion and not issued a penalty. If there are no disincentives against employers who fail to participate in an investigation, then such conduct may be repeated. In order to creation (sic) a

disincentive against employers who frustrate investigation (sic) through failure to provide records, the Director issues a penalty for such conduct."

On November 26, 1998, the Director dismissed the complaint by Cook for lack of evidence.

## ARGUMENT

Piete contends that prior to receiving the Demand for Records, she had spoken at some length to the Director's delegate regarding the relationship she had with Cook. She stated that she advised him that she was unaware she was an employer and was required to maintain records. She argues, in essence, that her ignorance of the law is relevant to the issue of whether a penalty is appropriate. She contends that her failure to maintain records was done with no knowledge or intent to contravene the *Act*. She argues that a party's intent ought to be a factor to consider by the Director in determining whether or not to impose a penalty.

The Director's delegate argued that although Piete stated that she had no records to provide the Director, she did meet with Ed Wall, the Director's delegate who was investigating the complaint, and provided him with a record of receipts, cheques issued to Cook, and an analysis of Piete's mother's expenses, provided by Piete's accountant. The Director's delegate argued that none of these documents provided any guidance as to the actual daily hours of work.

The Director's delegate argues that, on a balance of probabilities, Piete knew, or should have known, that her relationship with Cook was one of employer/employee. The Director's delegate further argued that ignorance of the regulations was not a reasonable explanation for failing to provide documents. The Director contends that if a penalty is not issued, employers could raise the defence of ignorance to circumvent the purposes of the *Act*, that is, to protect employees.

## ANALYSIS

In essence, the issue is whether ignorance of the law provides sufficient grounds for the Director to exercise her discretion against an employer for failing to maintain employer records.

In determining this issue, it is helpful to provide a background of the relevant provisions of the *Act* and *Regulations*.

Section 2 of the *Act* outlines the purposes of the *Act*. Those include ensuring that employees in British Columbia receive at least basic standards of compensation and conditions of employment and promoting the fair treatment of employees and employers. It is against these principles that other sections of the *Act* are interpreted.

Section 85(1) of the *Act* provides that for the purpose of ensuring compliance with the *Act* and the *Regulations*, the Director may (c) inspect any records that may be relevant to an investigation under this Part, and (f) require any person to produce or deliver to a place specified by the director, any records for inspection under paragraph (c).

Section 46 of the *Employment Standards Regulations* provides that a person who is required under Section 85 of the *Act* to produce or deliver records to the director must produce or deliver the records as and when required. Section 28 provides for a \$500.00 penalty for a contravention of Section 46 of the *Regulation*.

The Director's power is a discretionary one. Accordingly, the Director may look at a number of factors in determining whether or not to assess a penalty. In this instance, the Director sought a reasonable explanation in making that determination. The Director was of the opinion that a lack of knowledge of the obligation to maintain records was not a sufficient explanation.

In *478125 B.C. Ltd. v. British Columbia (Director of Employment Standards)* B.C.E.S.T. D. 279/98) the Tribunal emphasized that the requirement to maintain records pertaining to employment and hours of work is on the employer. The Tribunal held that it was the employer's responsibility to structure its affairs to comply with the *Act*.

Ignorance of the law is not a novel ground of appeal. The Tribunal has held in numerous cases that while an investigating officer has a discretion to impose a penalty where records do not comply with the requirements of the *Act*, Section 28 does not give the Director the discretion to impose a penalty only if the contravention was made knowingly. (see *C.S.Q.Foods Ltd. v. British Columbia (Director of Employment Standards)* BC EST #D118/97, *Performance Development Ltd. v. British Columbia (Director of Employment Standards)* BC EST D#117/97, *Lakeside Office Systems Ltd. v. British Columbia (Director of Employment Standards)* BC EST #D. 166/97).

The appeal is dismissed.

## **ORDER**

I order, pursuant to Section 115 of the *Act*, that the Determination dated November 26, 1998 be confirmed in the amount of \$500.00, together with whatever further interest that may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

**Carol Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**