

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 -

Jas-Ran Construction Ltd. operating as "Valley Contractors"
(" Jas-Ran ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No: 1999/714

DATE OF DECISION: March 17, 2000

DECISION

OVERVIEW

This is an appeal brought by Jas-Ran Construction Ltd. operating as “Valley Contractors” (“Jas-Ran”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on November 8th, 1999 under file number 76983 (the “Determination”).

By way of the Determination, the Director’s delegate imposed a \$500 monetary penalty based on Jas-Ran’s failure to produce payroll records as demanded.

RELEVANT LEGISLATION

The Director and her delegates are empowered to require persons to disclose relevant information and to produce documents for inspection [see subsections 85(1)(e) and (f) of the *Act*]. Section 46(1) of the *Employment Standards Regulation* states that “a person who is required under section 85(1)(f) of the *Act* to produce or deliver records to the director must produce or deliver the records as and when required”. Finally, section 28(b) of the *Regulation* prescribes a \$500 monetary penalty for each contravention of section 46 of the *Regulation*.

THE DETERMINATION

According to the information set out in the Determination (all of which is uncontradicted), a section 85(1)(f) Demand for production of payroll records was issued to Jas-Ran on October 8th, 1999. Pursuant to this Demand, certain payroll records relating to all Jas-Ran employees, spanning the period from January 1st to October 9th, 1999, were to be delivered to the Employment Standards Branch office in Abbotsford, B.C. by no later than 10:00 A.M. on October 27th, 1999. In the absence of production of the relevant records, the delegate issued the Determination now under appeal.

ISSUE ON APPEAL

Jas-Ran says that the Determination should be cancelled because “[Jas-Ran] has not operated during the 1999 year and has no records”. Further, upon receipt of the Demand, Jas-Ran says that its principal attempted to contact the delegate but was unable to do so by reason of the delegate’s unavailability due to illness.

ANALYSIS

Jas-Ran does not deny having received the Demand. Indeed, its “reasons for appeal” explicitly acknowledge that the Demand was, in fact, received and that no records were produced in response to the Demand. Further, there is nothing in the material before me which would

indicate that Jas-Ran, upon being served with the Demand, advised the delegate in writing that it was unable to produce records since there were no such records in existence.

There is nothing in the material before me to indicate that Jas-Ran made any attempt to contact another Employment Standards Branch officer once it learned (so it alleges, there is no corroborating evidence before me) that the officer who issued the Demand was unavailable due to illness. Certainly, the evidence before me falls well short of establishing that Jas-Ran made a good faith effort to respond to the Demand in a conscientious and duly diligent fashion.

This appeal, as it is framed, turns on the factual question as to whether or not Jas-Ran did, in fact, have any employees on its payroll during the period from January to early October 1999. In fact, as this Tribunal has now confirmed (see *Jas-Ran Construction Ltd.*, B.C.E.S.T. Decision No. 042/00 issued concurrently), Jas-Ran *did* have employees on its payroll--at least 21 employees--on September 26th, 1999. Accordingly, Jas-Ran should have had payroll records in its possession as of October 1999 and such records ought to have been produced in accordance with the October 8th, 1999 Demand. It would appear that Jas-Ran simply chose to ignore the Demand for production of records that was issued on October 8th.

ORDER

Pursuant to section 115 of the *Act*, I order that the November 8th, 1999 Determination be confirmed as issued in the amount of **\$500**.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal