

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C.38

- by -

Goldsmith Enterprises Ltd.
("GEL")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

Adjudicator: Hans Suhr

File No.: 96/615

Date of Hearing: January 21, 1997

Date of Decision: January 23, 1997

DECISION

APPEARANCES

Joanne Goldsmith	for Goldsmith Enterprises Ltd.
Ryan Goldsmith	for Goldsmith Enterprises Ltd.
Cal Mitten	for the Director of Employment Standards

OVERVIEW

This is an appeal brought by Goldsmith Enterprises Ltd. (“GEL”) pursuant to Section 112 of the Employment Standards Act (the “*Act*”) against Determination No. CDET 004142 issued by the Director of Employment Standards (the “Director”) on September 30, 1996.

The Director determined that GEL had contravened Section 27(1) of the *Act* and pursuant to Section 98 of the *Act* and Section 28 of the *Employment Standards Regulation* (“*Regulation*”) imposed a penalty of \$500.00.

GEL has appealed the Determination alleging that the Director erred in imposing the penalty.

An appeal hearing was held in Quesnel, B.C. on January 21, 1997. Ms. Joanne Goldsmith (“Goldsmith”) appeared as the authorized representative of GEL and was its sole witness. Mr. Cal Mitten (“Mitten”) provided information on behalf of the Director.

Goldsmith states that because of the level of cooperation shown to the Employment Standards Branch and the fact that one of the complainants Mike Milne (“Milne”) was a contractor, the penalty is unjust. Goldsmith further states that until a decision has been made with respect to the appeals filed in regard to the complaints filed by Milne and Brian Jungwirth (“Jungwirth”) the penalty is premature. Goldsmith further states that as the work in question took place prior to November 1, 1995, the penalty may be illegal.

Mitten states that the penalty determination applies to the fact that wage statements were not produced in accordance with the requirements of Section 27 of the *Act*. Mitten further states that the penalty determination stands on its own merits and is not dependent upon the outcome of any other proceedings. Mitten further states that GEL has not denied that they contravened the requirements of Section 27 of the *Act* with respect to indicating the overtime hours worked and the overtime rates paid on the wage statements. Mitten finally states that the transitional provisions contained in Section 128 (3) of the *Act* would apply if the complaints of Milne and Jungwirth were received prior to November 1, 1995, however, those complaints were not received until November 16, 1995 and January 19, 1996, respectively.

ISSUE TO BE DECIDED

Should the Determination (\$500.00 penalty) be varied, cancelled or confirmed?

FACTS

The facts of this appeal are not really complicated, nor is there any serious dispute of the facts.

The wage statements provided by GEL did not meet the requirements as set forth in Section 27 (1) of the *Act* in that neither the overtime hours worked or the overtime rate of pay was provided.

ANALYSIS

Section 27 (1) sets forth the information which must be contained on a wage statement provided by the employer. Section 27 (1) states:

Wage statements

27. (1) On every payday, an employer must give each employee a written wage statement for the pay period stating
- (a) the employer's name and address
 - (b) the hours worked by the employee
 - (c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis,
 - (d) the employee's overtime wage rate,
 - (e) the hours worked by the employee at the overtime wage rate,
 - (f) any money, allowance or other payment the employee is entitled to,
 - (g) the amount of each deduction from the employee's wages and the purpose of each deduction,
 - (h) if the employee is paid other than by the hour or by salary, how the wages were calculated for the work the employee is paid for,
 - (i) the employee's gross and net wages, and
 - (j) how much money the employee has taken from the employee's time bank and how much remains.

The wage statements provided by GEL do not contain the information as required by Section 27 (1) of the *Act*, nor do they contain the information as required by the provisions of Section 11 of the former Act.

I therefore conclude that GEL contravened Section 27 (1) of the *Act*.

Section 28 of the *Regulation* states:

Penalty for contravening a record requirement

28. The penalty for contravening any of the following provisions is \$500.00 for each contravention:

- (a) section 25 (2) (c), 27, 28, 29, 37 (5) or 48 (3) of the *Act*;
- (b) section 3, 13 or 46 of this regulation.

With respect to the argument of GEL that the wage statements were for a period prior to the effective date of the *Act*, November 1, 1995, I conclude that as the complaints were not received until after the effective date of the *Act*, all provisions of the *Act*, including the imposition of a penalty are applicable.

The appeal by GEL is therefore dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that Determination No. CDET 004142 be confirmed.

Hans Suhr
Adjudicator
Employment Standards Tribunal

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