

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 -

550488 B.C. Ltd. operating as Mac's Convenience Store

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 99/016

DATE OF DECISION: February 11, 1999

DECISION

OVERVIEW OF FACTS

This is appeal proceeded by way of written submissions.

This is an appeal, under Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination which was issued by a delegate of the Director of Employment Standards (the “Director”) on December 18, 1998. The Determination requires 550488 B.C. Ltd. to pay a penalty of \$500.00 for its failure to produce payroll records to the Director.

The appeal by 550488 B.C. Ltd. is based on four grounds:

1. the Director erred in finding that a former employee, Farnam Garousy, is entitled to overtime wages;
2. vacation pay payments are included in the payroll records;
3. the complaint by Farnam Garousy is unfounded; and
4. since Farnam Garousy “...worked a regular 160 hours per month and his schedule did not change we did not supply details...”

The Determination sets out the following findings of fact in support of imposing the penalty:

FACTS

On November 25, 1998, Julie Brassington issued a Demand for Records pursuant to Section 85(1)(f) of the *Employment Standards Act* (the *Act*) to 550488 B.C. Ltd. operating Mac’s Convenience Store. A copy of the Demand and the Canada Post Acknowledgment of Receipt card are attached. This Demand was necessary because the complainant alleges that he was required to work overtime for which he was paid \$6.00 per hour cash.

Inspection of these records was relevant to our investigation under the *Act*.

FINDING

Julie Brassington reviewed the records and determined that the records failed to meet the requirement of Section 28(1) of the *Act* because they did not contain the following information: a record of the daily hours worked by the complainant, vacation pay or statutory holiday pay.

CONCLUSION

550488 B.C. Ltd. operating as Mac's Convenience Store has contravened Section 46 of the *Employment Standards Regulation* by failing to produce proper payroll records. The penalty for this contravention is \$500.00. It is imposed under Section 28(b) of the *Employment Standards Regulation*.

ANALYSIS

Section 28 of the *Act* requires employers to keep detailed payroll records for each employee. Specifically, Section 28(1)(d) requires the employer to record “the hours worked by an employee on each day, regardless of whether the employee is paid on an hourly or other basis”.

Section 85 (1)(c) of the *Act* describes the powers given to the Director to inspect any records that may be relevant to an investigation under Part 10 of the *Act*. Section 85(1)(f) permits the Director to:

require a person to produce, or deliver to a place specified by the Director, any records for inspection under paragraph (c).

Section 46 of the *Regulation* (B.C. Reg. 396/95) states:

1. 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.
2. ...

The penalty was imposed by the Director's delegate under authority given by Section 98 of the *Act* and Section 28 of the *Regulation*.

Section 28 of the *Regulation* establishes a penalty of \$500.00 for each contravention of Section 28 of the *Act* and Section 46 of the *Regulation*. Thus, the Director has no discretion concerning the amount of the penalty to be imposed once she has determined that a contravention of Section 28 has occurred and a penalty is appropriate.

Section 29(2) of the *Regulation* sets out the penalty for contravening a provision or requirement listed in Appendix 2 of the *Regulation*. In particular, Section 29(2) of the *Regulation* imposes a \$0 penalty for contravening a “specified provisions” for the first time. However, Section 28 of the *Act* is not a “specified provision”. I conclude from this

that the Legislature intended that a \$500.00 penalty be imposed for each contravention of Section 28 of the *Act*.

The appeal by 550488 B.C. Ltd. acknowledges that it did not deliver to the Director the hours of work records as required under Section 85 of the *Act*. Further, it's appeal does not establish that the Director erred in making the Determination which is under appeal. For all of these reasons I find that the submissions made by 550488 B.C. Ltd. do not establish that the Director erred in imposing a penalty.

ORDER

I order, under Section 115 of the *Act*, that the Determination be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC:sa