

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 -

461530 BC Ltd. operating as
Williamson's Patient Transfer Services
("Williamson's")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 96/738

DATE OF DECISION: February 5, 1997

DECISION

OVERVIEW

This is an appeal by 461530 B.C. Ltd. operating Williamson's Patient Transfer Service ("Williamson's"), under Section 112 of the *Employment Standards Act* (the "Act"), against Determination No. CDET 004709 which was issued by a delegate of the Director of Employment Standards on November 18, 1996. The Determination imposed a penalty of \$4,250.00 on Williamson's under authority given by Section 98 of the *Act* and Section 29 of the *Employment Standards Regulation* (BC Reg. 396/95).

ISSUE TO BE DECIDED

The issue to be decided is whether the Determination should be varied, cancelled or confirmed.

FACTS

The Determination which was issued by a delegate of the Director on the 18th of November, 1996, set out the following reasons for the penalty being imposed:

A confidential complaint was filed alleging that employees based in Victoria were not paid within 8 days of the pay period in accordance with Section 17(1) of the *Employment Standards Act*.

The employer provided a listing of employees in Victoria who were not paid for the pay period ending August 31, 1996, in accordance with Section 17(1) of the *Act*. The employer further advised that the pay cheques were dated and went out on September 10, 1996, which was ten days after the end of the pay period.

The Employer has contravened Section 17(1) of the Act.

Section 17(1) is a 'specified provision' under Section 29 of the *Employment Standards Act Regulation*. The penalty for contravening a specified provision is \$250.00, multiplied by the number of employees affected by the contravention, if the person contravening the provision has contravened a specified provision of that Part on 2 previous occasions.

The employer has contravened Section 17(1) of the act on two previous occasions set out in Penalty Determinations 002628 and 003270 respectively.

A penalty in the amount of \$4,250.00 is hereby assessed (17 employees x \$250.00)

Upon receipt of the appeal, the Tribunal requested the Director of Employment Standards to provide all documents relevant to this appeal. A copy of the Director's submission was sent by the Tribunal to Williamson's on December 23, 1996 with a requirement that any response should be submitted to the Tribunal by January 13, 1997. Subsequently, the time period for responding was extended to January 29, 1997.

To date, the Tribunal has not received any response from Williamson's.

In its appeal dated December 10, 1996 Williamson's give the following reason's for its appeal:

"I understand that cheques were late. However it was with 99% of the employees' consent. I can understand being penalized for one individual or active individuals that have complained, but to fine the company for those who were in agreement is absolutely ridiculous when the fine is higher than 85% of the employee wages."

ANALYSIS

It is clear from the reasons given for its appeal that Williamson's does not dispute that the payroll cheques given to its employees were "late".

Section 4 of the *Act* states that:

The requirements of this Act or the regulations are minimum requirements, and an agreement to waive any of those requirements is of no effect, subject to sections 43, 49, 61 and 69.

Section 17(1) of the *Act* States:

At least semimonthly and within 8 days after the end of the pay period, an employer must pay to an employee all wages earned by the employee in a pay period.

This employer has contravened Section 17(1) of the *Act* on two previous occasions as set out in Determination No. 002628 and No. 003270. The second Determination imposed a penalty of \$150.00 per employee.

Section 98 of the *Act* gives the Director the authority to impose a penalty.

Section 29 of the *Regulation* sets out the penalties which must be imposed for a contravention of a ‘specified provision’ listed in Appendix 2 of the *Regulation*. Section 17(1) is one of the provisions which is listed in Appendix 2 of the *Regulation*.

For all these reasons I can find no ground on which to alter or amend Determination No. CDET 004709.

ORDER

I order, pursuant to Section 115 of the *Act*, that Determination No. CDET 004709 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal