

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 -

Cur-Quin Enterprises
(the “Employer”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Mark Thompson

FILE NO.: 97/882

DATE OF DECISION: February 19, 1998

DECISION

OVERVIEW

This is an appeal brought by Cur-Quinn Enterprises Ltd. (the “Employer”) pursuant to Section 112 of the Employment Standards Act (the “Act”) from a Determination issued by a Delegate of the Employment Standards (the “Director”) on November 24, 1997. The appeal was decided on the basis of written submissions from the Employer and the Director. The Determination imposed a penalty of \$500 on the Employer for contravening section 48 of the Employment Standards Act by failing to deliver employer records within the time limits contained in a Demand for Employer Records issued by the Director’s Delegate

ISSUE TO BE DECIDED

Should the Employer be assessed a penalty for its failure to respond to the Demand for Employer Records?

FACTS

Most of the facts in this case were not in dispute. The Director’s Delegate issued a Demand for Employer Records concerning three former employees of the Employer, plus all other office staff persons who had left the employ of the Employer in the previous six months. The Demand for Employer Records, which was dated July 28, 1997, contained a notice that failure to comply with a record requirement might result in a \$500 penalty under Section 28 of the Employment Standards Regulation. The Employer produced a number of records in response to the Demand. According to the Employer’s statement in its appeal, it provided the necessary records for two of the three former employees named in the Demand. The Director’s Delegate issued a Determination on November 24, 1997 imposing the \$500 penalty. On the same date, another Delegate issued a Demand for Employer Records for four additional individuals.

ANALYSIS

The basis of the Employer’s appeal is that it was unable to provide the records named in the Demand for one employee who refused to sign the employee time record book because she was on salary. The Employer stated that it did not maintain records of “formal hour by hour” work by salaried employees. The Employer also stated that the “LRB” (sic) had ruled in its favour in the cases of the two other employees named in the Demand for Records. Therefore, it requested that the penalty be cancelled in light of its efforts to

comply in the face of the lack of cooperation by the employee involved or that the penalty be pro-rated to reflect the response it did make.

The Act and the Employment Standards Regulation are clear that the Director has the authority to impose a penalty for failure to produce records in response to a Demand for Employer Records. One of the purposes of the Act as stated in Section 2(d) is to “provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act.” The Employment Standards Branch is unable to carry out this function unless employers cooperate by providing appropriate records. In this case, the Employer’s records apparently supported a finding by the Delegate that it had not contravened the Act with respect to at least some complaints against it. It is scarcely necessary to state that an Employer has the authority to require employees to comply with its record keeping procedures to meet its statutory obligations. The requirements of Section 40 of the Act to maintain adequate employment records are clear, as the Employer acknowledged in its appeal, and the Employer contravened its statutory obligations.

ORDER

For these reasons, pursuant to Section 115 of the *Act*, the Determination of November 24, 1997 is confirmed.

Mark Thompson
Adjudicator
Employment Standards Tribunal