

An appeal

- by -

K. Girn Enterprises Inc.
("Girn")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

TRIBUNAL MEMBER: David B. Stevenson

FILE No.: 2005A/47

DATE OF DECISION: June 1, 2005

DECISION

SUBMISSIONS

Kam Girn	on behalf of K. Girn Enterprises Inc.
Gillian MacGregor	on behalf of the Director
David Turner	on his own behalf

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by K. Girn Enterprises Inc. (“Girn”) of a Determination that was issued on February 25, 2005 by a delegate of the Director of Employment Standards (the “Director”). The Determination found that Girn had contravened Part 3, Sections 17, 27 and 28, Part 4, Section 35, as varied by Section 37.3 of the *Employment Standards Regulation* (the “Regulation”), and Part 7, Section 58 of the *Act* in respect of the employment of David Turner (“Turner”) and ordered Girn to pay Turner an amount of \$1,631.44, an amount which included wages and interest.

The Director also imposed administrative penalties on Girn under Section 29(1) of the *Regulation* in the amount of \$2000.00.

The total amount of the Determination is \$3,631.44.

Girn appeals the amount of the administrative penalties. He does not appeal any other aspect of the Determination, although he says it is wrong.

The Tribunal has reviewed the appeal and the materials submitted with it and has decided an oral hearing is not necessary in order to decide this appeal.

ISSUE

The issue in this appeal is whether there is any ground upon which the Tribunal may vary the amount of the administrative penalties imposed on Girn under Section 29(1) of the *Employment Standards Regulation*.

THE FACTS

For the purpose of this appeal, the facts are simply stated.

Girn is a provincial trucking company. Turner was employed by Girn as a truck driver from July 2002 to August 2003. He picked up and delivered gravel to construction sites in the lower mainland. Turner claimed Girn had failed to pay him wages for travel, had failed to pay overtime wages and had failed to pay annual and statutory holiday pay. The claim for annual and statutory holiday pay was resolved between the parties before the complaint hearing and was not included in the Determination.

In respect of the unresolved matters, following a complaint hearing, the Director made the following findings relevant to this appeal:

- Girn had failed to comply with a Demand For Employer Records dated February 16, 2004;
- Girn had failed to keep payroll records as required by Section 28 of the *Act*;
- Girn had failed to comply with all of the requirements in Section 27 of the *Act*;
- Girn had failed to comply with the requirement in Section 17 of the *Act* to pay all wages earned by an employee at least semi-monthly; and
- Girn had contravened the overtime provisions in Section 37.3 of the *Employment Standards Regulation*, which applied to Turner as a short haul truck driver.

The Determination ordered Girn to cease contravening those sections of the *Act* and *Regulation* which were found by the Director to have been contravened and to comply with the requirements of the *Act* and *Regulation*.

ARGUMENT AND ANALYSIS

The grounds upon which an appeal may be made are found in Subsection 112(1) of the *Act*, which says:

112. (1) *Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:*
- (a) *the director erred in law;*
 - (b) *the director failed to observe the principles of natural justice in making the determination;*
 - (c) *evidence has become available that was not available at the time the determination was made.*

The Appeal Form indicates the appeal is based on an alleged failure by the Director to observe principles of natural justice in making the Determination. The appeal submission filed by Girn, however, provides what appears to be two arguments supporting the appeal, neither of which relate to natural justice considerations.

First, Girn says the decision to impose administrative penalties is unfair, since the company was acting in good faith and with best efforts to comply with the *Act* and *Regulation*.

Second, Girn says the amount of wages found by the Director to be owing is wrong, even though Girn says that finding is not being appealed.

The effect of Girn's decision to not appeal this finding, or any of the other findings made by the Director that Girn had contravened provisions of the *Act*, effectively means there is no issue that Girn has contravened the *Act* as found by the Director in the Determination. The matter of the administrative penalties will be decided on that basis.

Even if I have misread the appeal and Girn is appealing the Director's findings of contraventions of the *Act*, Girn has not shown any error relating to those findings that would justify the Tribunal's intervention under Section 115 of the *Act*.

On the matter of the administrative penalties imposed by the Director, it is noted first that the Tribunal has indicated in *Summit Security Group Ltd.*, BC EST #D133/04 (Reconsideration of BC EST #D059/04), that the administrative penalty scheme in the *Act* is generally consistent with the purposes of the *Act*, relating to the purpose of ensuring employees receive at least basic terms and conditions of employment, encouraging open communication between employees and their employers and providing fair and efficient procedures for the resolution of disputes.

The Tribunal has confirmed in several other decisions that once a contravention of the *Act* has been found in a Determination, the imposition of an administrative penalty is mandatory (see, for example, *Virtu@lly Canadian Inc. operating as Virtually Canadian Inc.*, BC EST #D087/04, *Marana Management Services Inc. operating as Brother's Restaurant*, BC EST #D160/04, and *Kimberly Dawn Kopchuk*, BC EST #D049/05. In the *Marana Management Services* decision, the Tribunal stated:

Once the delegate finds a contravention, there is no discretion as to whether an administrative penalty can be imposed. Furthermore, the amount of the penalty is fixed by Regulation. Penalty assessments are mandatory . . .

Girn has argued that it is unfair to impose administrative penalties in the amount of \$2000.00 where the company acted in good faith and made best efforts to comply with the *Act*. However, in considering an appeal of administrative penalties, as with an appeal of any other aspect of a Determination, an appellant is limited to the grounds of appeal set out in Section 112(1) of the *Act*, above. That provision does not include considerations of "fairness" or whether the employer has acted in "good faith" or with "best efforts" as providing grounds for appealing the mandatory administrative penalties imposed under Section 29 of the *Regulation* (see *Actton Super-Save Gas Stations Ltd.*, BC EST #D067/04).

The appeal does not show the Director made any reviewable error in imposing the administrative penalties and, accordingly, the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated February 25, 2005 be confirmed in the total amount of \$3,631.44, together with any interest that has accrued under Section 88 of the *Act*.

David B. Stevenson
Member
Employment Standards Tribunal