

An appeal

- by -

Robsonstrasse City Motor Inn Ltd.  
("Robsonstrasse")

- 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 (as amended)

**TRIBUNAL MEMBER:** Ian Lawson

**FILE No.:** 2005A/58

**DATE OF DECISION:** June 24, 2005



5. Regarding Ponce's complaint, the delegate accepted Robsonstrasse's arguments regarding his rate of pay and the number of hours he had worked, but found again that Robsonstrasse had failed to pay Ponce's wages within 6 days of his termination of employment.

## ARGUMENT

6. In its notice of appeal, Robsonstrasse claims the Director failed to observe the principles of natural justice in making the Determination. I reproduce verbatim the entirety of its submission respecting Lopez as follows:

The Robsonstrasse City Motor Inn was charged a penalty of \$500.00 respectively, under Section 18 and Section 46. According to Mr. Gould, Delegate of the Director of the Employment Standards Branch, the Robsonstrasse failed to pay Ms. Lopez (employee) within 6 days of quitting her job. Ms. Lopez was claiming an additional 3 days that she had worked in May (i.e. May 11, 12, and 13). According to our records Ms. Lopez was paid for 2 days of training (4 hours each) as per our agreement. Ms. Lopez asked that she be given extra days for training, as she was having some difficulty. She was informed that any further training time incurred would be unsupervised and unpaid. On July 03, 2004 Ms. Lopez quit her job and was claiming for the 3 days she spent training on the computer. When she walked of [sic] the job, she refused to accept the last 3 days she worked (July 01-03, 2004) incl. her vacation pay and holiday pay unless the 3 days of training were included. The matter was turned over to the Employment Standard Branch. According to Mr. Gould, Ms. Lopez was entitled to receive the monies owed for the 3 training days. The appeal is in protest for the penalty incurred. The wages owed amounted to \$512.55 net and the penalty imposed was \$500.00....

The Robsonstrasse City Motor Inn Ltd. is charged under a first time occurrence of \$1,000.00. We have a total of 4 full time employees and the amount of \$1,000.00 as a penalty adds to an already difficult financial strain on our cash flow. We hope that the appeal board will understand and sympathize with our situation and waive the \$1,000.00 penalty charged.

7. It is clear, therefore, that the real issue raised by Robsonstrasse is whether the imposition of penalties in this case was a breach of the principles of natural justice.

## ISSUE

8. Can Robsonstrasse be relieved of the administrative penalties imposed for its violation of sections 18 and 46 of the *Act*?

## ANALYSIS

9. Section 98 of the *Act* reads in part as follows:

**98(1)** In accordance with the regulations, a person in respect of whom the director makes a determination and imposes a requirement under section 79 is subject to a monetary penalty prescribed by regulation.

(1.1) A penalty imposed under this section is in addition to and not instead of any requirement imposed under section 79.

(1.2) A determination made by the director under section 79 must include a statement of the applicable penalty.

10. Section 29 of the *Employment Standards Regulation* reads in part as follows:

29(1) Subject to section 81 of the Act and any right of appeal under Part 13 of the Act, a person who contravenes a provision of the Act or this regulation, as found by the director in a determination made under the Act, must pay the following:

(a) if the person contravenes a provision that has not been previously contravened by that person, or that has not been contravened by that person in the 3 year period preceding the contravention, a fine of \$500; ...

11. This regime of mandatory penalties came into effect on November 30, 2002. One of the legislative purposes behind mandatory penalties may have been to strengthen the Director's role in resolving complaints through mediation or other means, as the Director can rightly say to parties that if a Determination must be made against them, administrative penalties will surely follow. For those parties who are the subject of Determinations, however, the penalties can often amount to more than the wages found owing and the amount of the penalties can seem excessive if the party did not knowingly contravene a provision of the *Act*.

12. Robsonstrasse, however, is not the first employer to question the fairness of administrative penalties. In *Marana Management Services Inc. operating as Brother's Restaurant*, BCEST #D160/04, this Tribunal considered an employer's appeal from \$1,500.00 in penalties imposed respecting failure to pay wages in the total amount of \$299.17. The employer in that case argued the penalties were disproportionately harsh in light of the nature of the contraventions. Adjudicator Roberts held that even though the penalties seemed excessive, and the imposition of cumulative penalties for essentially minor breaches of the *Act* seemed to be unfair, the plain meaning of the legislation could not be ignored. The Tribunal may not substitute its own view of the Legislature's intention based solely on its judgment about what is "fair" or "logical": *Re Douglas Mattson*, BCEST #RD647/01. Adjudicator Roberts also noted that this Tribunal has ruled that the new penalty regime does not recognize fairness considerations as providing exceptions to the imposition of mandatory penalties: *Acton Super-Save Gas Stations Ltd.*, BCEST #D067/04. As a result, Adjudicator Roberts found there was no place for fairness considerations in an appeal from the imposition of penalties. The Tribunal's review power could only be exercised to ensure penalties were not imposed for concurrent contraventions or several contraventions arising out of the same circumstances.

13. A Reconsideration Panel recently made the following observations on the administrative penalty regime generally, in *Director of Employment Standards (Re Summit Security Group Ltd.)*, BCEST #RD133/04:

As noted by the Tribunal in *Royal Star Plumbing, Heating & Sprinklers Ltd.*, BC EST #D168/98, administrative penalties generated through provisions of the *Employment Standards Regulation* are part of a larger scheme designed to regulate employment relationships in the non-union sector. Such penalties are generally consistent with the purposes of the *Act*, including ensuring employees receive at least basic standards of compensation and conditions of employment and encouraging open communication between employers and their employees. The design of the administrative penalty scheme under Section 29 of the *Employment Standards Regulation*, which provides mandatory penalties where a contravention is found by the Director in a Determination issued under the *Act*, meets the statutory purpose providing fair and efficient procedures for the settlement of disputes over the application and interpretation of the *Act*. Such an interpretation

and application of the *Act* is also consistent with the modern principles of, or approach to, statutory interpretation noted by Driedger, *Construction of Statutes*, 2<sup>nd</sup> ed. Toronto: Butterworths, 1983, p. 87ff. and the nature and purpose of employment standards legislation as explained by the Supreme Court of Canada in *Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 S.C.R. 460, which was cited by the Tribunal in *J.C. Creations Ltd. O/a Heavenly Bodies Sport*, BC EST #RD 317/03 (Reconsideration of BC EST #D132/03).

14. It is therefore clear that the Tribunal may not interfere with the penalties imposed on Robsonstrasse merely because the amount of the penalty is higher than the wages found to be owing, or because these were Robsonstrasse's first offences, or because the penalties will have a detrimental impact on the cash flow in this small business. As these are all reasons advanced by Robsonstrasse in support of its argument there was a breach of the principles of natural justice in the making of the Determination, I have no choice but to dismiss its appeal.

### **ORDER**

15. Pursuant to section 115(1) of the *Act*, the two Determinations under ER#029-310 issued by J.R. Gould, a delegate of the Director of Employment Standards, on March 7, 2005 are confirmed, with interest payable pursuant to section 88.

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**Ian Lawson**  
**Member**  
**Employment Standards Tribunal**