

**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 -

L.E.S. Enterprises Ltd. Operating as Sparkle Wash  
("L.E.S.")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 97/034

**DATE OF DECISION:** March 13, 1997

## DECISION

### OVERVIEW

This is an appeal by L.E.S. Enterprises Ltd. operating as Sparkle Wash (“L.E.S.”), under Section 112 of the *Employment Standards Act* (the “Act”), against Determination No. CDET 005040 which was issued by a delegate of the Director of Employment Standards on December 23, 1996. The Determination requires L.E.S. to pay \$500.00 as a penalty for contravening Section 46 of the *Employment Standards Regulation* (Production of Records).

### ISSUE TO BE DECIDED

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

### FACTS

The Determination imposed a penalty of \$500.00 on L.E.S. for contravening Section 46 of the *Employment Standards Regulation* (production of records) for the following reasons:

The Employer, (L.E.S.) was required, pursuant to Sections 28, 85, and 98 of the *Employment Standards Act* and Sections 28 and 46 of the *Employment Standards Regulation* to provide payroll records for all of its employees by June 3, 1996.

The Employer provided partial records for one employee (Stephen Davis) on June 7, 1996. Subsequently, a second Demand was issued on July 31, 1996, together with a covering letter, ...setting out the specific documents required to be delivered by August 27, 1996.

On August 26, 1996, the Employer delivered some further documents but failed to produce the information required by the *Employment Standards Act* as noted above.

Les Edgelow submitted an appeal to the Tribunal on behalf of L.E.S. Enterprises Ltd. That appeal offers the following reasons for cancelling the Determination:

- All hours of work information was delivered to the Employment Standards Branch on August 26, 1996.

- Former employees delivered copies of their “payroll stubs” (Statement of earnings) directly to the Employment Standards Branch.
- Due to winter weather conditions, the Determination (dated December 23, 1996) was not delivered to L.E.S. until early January, 1997.
- “Payroll stubs” were sent to the Employment Standards Branch upon request of the Determination.

## ANALYSIS

Section 28 of the *Act* requires employers to keep detailed payroll records for each employee.

Section 85(1)(c) of the *Act* describes the powers given to the Director of Employment Standards 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 to 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:

*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.*

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 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 Section 28 of the *Act* had been contravened.

The appeal made on behalf of L.E.S. does not challenge or deny that the Director’s delegate demanded production of payroll records for all employees by June 13, 1996 and again by August 27, 1996.

It is not adequate for L.E.S. to argue that it produced a copy of payroll records upon receipt of the Determination.

For all of the above reasons I conclude that I should not vary or cancel the Determination.

**ORDER**

I order, under Section 115 of the *Act*, that Determination No. CDET 005040 be confirmed.

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**