

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 -

Rise Investments Ltd. Operating as Nuffy's Donut's
("Rise")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 97/005

DATE OF DECISION: March 14, 1997

DECISION

OVERVIEW

This is an appeal by Rise Investments Ltd. Operating as Nuffy's Donuts ("Rise"), under Section 112 of the *Employment Standards Act* (the "Act"), against Determination No. CDET 004930 which was issued by a delegate of the Director of Employment Standards on December 11, 1996. The Determination imposed a \$500.00 penalty on Rise for contravening Section 28 of the *Act* (payroll records).

ISSUE TO BE DECIDED

Should the Determination be cancelled, varied or confirmed?

FACTS

The Determination imposed a penalty of \$500.00 because the Director's delegate found that Rise Investments Ltd. had contravened Section 28 of the *Act* for the following reasons:

On September 9, 1996 the employer was forwarded a letter advising him of the complaint and requesting his response to the allegations. The letter included the following statement:

"If you do not feel that Cheryl is owed money, please forward in writing your reasons along with a copy of your payroll records regarding Cheryl for audit purposes."

A Demand for Employer Records was issued on October 23, 1996. The employer was to deliver the records by 12 o'clock noon on November 6, 1996.

As of December 11, 1996 records had not been received. The employer has failed to provide the records as set out in Section 46 of the *Employment Standards Act Regulation*

In accordance with the *Act* and *Regulation*, the penalty for contravening Section 46 is \$500.00.

The appeal submitted by Rise includes a written statement by its bookkeeper, Cheng Lawrence, that he did not receive any letters from the Employment Standards Branch during the months of October or November, 1996. Cheng also states that he sent all

employment records to the Director's delegate immediately upon receipt of the Determination by certified mail on December 13, 1996.

Documents provided to the Tribunal and to Rise by the Director's delegate show that the Demand dated October 23, 1996 was sent by registered mail and was received by Rise on October 28, 1996.

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 of the *Regulation* 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.

It is clear from the Director's certified mail records that the Demand for Employer Records was received by Rise on October 28, 1996. Its receipt was acknowledged by D. Dequire, who signed the Acknowledgment of Receipt.

Rise did not deliver the payroll records by noon on November 6, 1996 as required in the Demand.

For all of these reasons I conclude that there are no grounds on which to vary or cancel the Determination.

ORDER

I order, under Section 115 of the *Act*, that Determination No. CDET 004930 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal