

**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 -

C.S.Q. Foods Limited Operating as Bill Bailey's Family Restaurant  
("C.S.Q.")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 97/067

**DATE OF DECISION:** March 24, 1997

## DECISION

### OVERVIEW

This is an appeal by C.S.Q. Foods Limited operating as Bill Bailey's Family Restaurant ("C.S.Q."), under Section 112 of the *Employment Standards Act* (the "Act"), against Determination which was issued by a delegate of the Director of Employment Standards on January 16, 1997. The Determination imposed a penalty of \$500.00 based on a finding that C.S.Q. contravened Section 28 of the *Act* (Payroll Records).

### ISSUE TO BE DECIDED

Should the Determination be cancelled, varied or confirmed?

### FACTS

The Determination shows that in response to a request for payroll records, C.S.Q.'s accountant provided certain records from which the investigating officer concluded that:

1. "the records were incomplete;
2. no records were submitted that evidenced hours or days worked; and
3. subsequent requests for these records resulted in nothing further."

The reasons given by C.S.Q. for its appeal include the following:

- A \$500.00 penalty was imposed for not keeping complete payroll records...that evidenced hours or days worked.
- C.S.Q.'s payroll is prepared by an accounting firm.
- Time cards for each employee were prepared on a bi-weekly basis and summarized into weekly totals for the purpose of preparing the payroll.
- Time cards were discarded as the employer thought they were no longer necessary and was short of storage space. The time cards were never needed before. The accountant has complete payroll records in all other respects.
- C.S.Q.'s accountant provided to the investigating officer all information that if had and answered his questions the best it could.

- The employer always tries to comply with the *Employment Standards Act*; any non-compliance was only because of ignorance and not on purpose.

## ANALYSIS

Section 28 of the *Act* requires employers to keep detailed payroll records for each employee. In particular, Section 28(1)(d) requires that "...the hours worked by an employee on each day" be kept on record by the employer.

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.

I am sympathetic to the argument made by C.S.Q. that it did not knowingly contravene Section 28 of the *Act*. However, Section 28 of the *Regulation* does not give the Director (or her delegate) the discretion to impose a penalty only if the contravention was made knowingly.

## ORDER

I order, under Section 115 of the *Act*, that the Determination be confirmed.

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**Geoffrey Crampton  
Chair  
Employment Standards Tribunal**