

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 -

Mayfair Towing Ltd.
("Mayfair")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 96/251

DATE OF DECISION: June 14, 1996

DECISION

OVERVIEW

This is an appeal by Mayfair Towing Ltd. (“Mayfair”), under Section 112 of the *Employment Standards Act* (the “*Act*”), against the Determination # CDET 001710. The Determination was issued by the delegate of the Director of Employment Standards (the “Director’s Delegate”) on March 22, 1996.

The Determination found that Mayfair had contravened Section 28 of the *Act* (Payroll records) and Section 46 of the Employment Standards Regulation (Production of Records).

A \$500.00 penalty was imposed under Section 98 of the *Act*

I have reviewed Mayfair’s written submission and the information provided by the Director’s delegate and have concluded that Mayfair’s appeal should be dismissed.

FACTS

On March 1, 1996 an authorized representative of the Director issued a “Demand for Employer Records” which required Mayfair to “... disclose, produce and deliver employment records for all employees for the period of January 1, 1995 to February 29, 1996.” The Demand required Mayfair to produce the records by March 15, 1996.

The Demand included the following statement:

Failure to comply with a record requirement may result in a \$500.00 penalty for each contravention as stated in Section 28 of the Regulations.

Mayfair’s appeal gave only the following as its reason for appealing the Determination:

Mr. Eric Ronse called me and set up appointment to meet on March 14, 1996 at 10:00 a.m. I sat in the office until 1:00 p.m. He did not show.

Upon receipt of Mayfair's appeal, the Director of Employment Standards was invited to make a submission, which it did. A copy of the Director's submission was sent to Mayfair on May 1, 1996. Mayfair's solicitor acknowledged receipt of the submission on May 13, 1996 and was granted an extension to May 24, 1996 for submission of a reply. The Tribunal did not receive a reply from Mayfair or its solicitor. Mayfair's solicitor was granted a further extension to June 7, 1996 for a reply. No reply was received by the Tribunal.

ANALYSIS

The Director's submission contains two objections to Mayfair's appeal. The Director's first objection is that Mayfair did not serve the Director with a copy of its appeal. The second objection is that Mayfair's appeal is "frivolous, vexatious or trivial or is not brought in good faith." The following submission supports the Director's objection:

On March 11, 1996 Industrial Relations Officer, Eric Ronse ("Ronse") arranged to meet with Brian Ponton ("Ponton") on March 14, 1996 to review Adrian MacInnes ("MacInnes") towing records ("pinks"). Pinks are not payroll records as required by s. 28 of the *Employment Standards Act*.

Ronse reminded Ponton of the March 1, 1996 Demand for Records (this Demand is enclosed with the original Determination served on Mayfair). Ponton replied that he was not legally obligated to provide the records for all employees and would only do so if in receipt of a "court order".

Later on March 11, 1996, Ronse telephoned Ponton and left a message for Ponton that he (Ronse) was not interested in seeing the pinks. This was intended to indicate to Ponton that the meeting for March 14 was canceled, since Ponton would not produce the records under the *Employment Standards Act*.

In our view, Mayfair's appeal is frivolous and trivial.

Mayfair is not appealing the substantive facts for which this Determination was issued. Mayfair is in contravention of both s. 28 of the *Employment Standards Act* and s. 46 of The *Employment Standards Act Regulations*. Those facts are not disputed in the appeal.

Mayfair is exploiting the appeal process to delay the inevitable; viz., paying a \$500.00 penalty.

Ponton is angry that Ronse did not meet with him on March 14. This is not a bona fide appeal. It is frivolous and trivial and should be dismissed under s.114(1)(c). We request that the Tribunal issue an Order under s. 115 confirming the Determination.

Section 114(c) of the *Act* gives to the Tribunal the authority to dismiss an appeal if it is satisfied that "... the appeal is frivolous, vexatious or trivial or is not brought in good faith." I note that Mayfair's appeal does not dispute the contravention of Section 28 of the *Act* and Section 46 of the *Regulation*. I also note that Brent Ponton refused to provide payroll records to a representative of the Director and would only do so under a "court order." In addition Mayfair's solicitor requested additional time to respond to the Director's submission, but did not make a reply to the Tribunal. Finally, I note that Mayfair did not deliver a copy of its appeal to the Director, as required in Section D of the Tribunal's appeal form.

For all these reasons I conclude that Mayfair's appeal is frivolous, vexatious or trivial or is not brought in good faith.

ORDER

I order, pursuant to Section 115 of the *Act*, that Determination # CDET 001710 be confirmed.

Geoffrey Crampton
Adjudicator
Employment Standards Tribunal

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