

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the

*Employment Standards Act*, R.S.B.C. 1996, c. 113

-by-

West Point Gas Company Inc.

(“West Point Gas”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 98/123

**DATE OF DECISION:** April 15, 1998

## DECISION

### OVERVIEW

This is an appeal filed in the name of Christy Patterson, whom I understand to be a shareholder of West Point Gas Company Inc. ("West Point Gas") pursuant to section 112 of the *Employment Standards Act* (the "Act") from a Determination issued by the Director of Employment Standards (the "Director") on February 4th, 1998 under file number 086-545 (the "Determination").

The Director issued a penalty determination in the amount of \$500 in consequence of West Point Gas' apparent failure to produce certain employment records as demanded.

### FACTS

On October 6th, 1997 one Jim Hopkins, a former employee of West Point Gas, filed a complaint with the Employment Standards Branch alleging, *inter alia*, that he had been terminated without cause and was owed unpaid wages. On January 5th, 1998, the Director's delegate wrote to West Point (Attention: Mr. Bryan Patterson, a company Director) advising of the complaint and asking the employer to either provide a cheque for any unpaid wages due to Mr. Hopkins or payroll records proving that no wages were payable.

Apparently, no response was received to the Director's January 5th letter and thus the Director issued a "Demand for Employer Records" to West Point Gas on January 16th, 1998; the Demand obliged West Point Gas to "disclose, produce and deliver" employment records for the period August 9th to September 29th, 1997 relating to Jim Hopkins. These employment records were to be delivered to the Abbotsford Employment Standards Branch office on or before 4:00 P.M. on January 31st, 1998. The Demand was sent out by certified mail and the employer acknowledged receipt on January 21st, 1998. It should be noted that the employer had some ten days to comply with the Demand.

So far as I can gather, the employment records that were demanded were not produced prior to the deadline set out in the Demand.

### ANALYSIS

The Demand refers to both section 85 of the *Act* and section 28 of the *Employment Standards Regulation*. More specifically, section 85(1)(f) of the *Act* authorizes the Director to require the production of employment records. Section 28 of the *Regulation* provides for a \$500 penalty if employment records are not produced as demanded.

Clearly, there is nothing in the material before me to suggest that the Determination ought to be cancelled. The Demand was properly issued and served and yet no records were produced as demanded

I should also add that the appeal filed by Christy Patterson is, in my view, irregular on its face. Christy Patterson is, according to the B.C. Registrar of Companies, neither an officer nor a director of West Point Gas. Christy Patterson asserts in a letter appended to the appeal form that she has submitted the appeal on behalf of Bryan Patterson, a “shareholder” of West Point Gas. A shareholder, *per se*, has no legal authority to file an appeal on behalf of a company in which he or she holds shares. As noted above, Bryan Patterson is recorded as a company director and, as such, does have such authority.

However, even if it could be said that the employer’s appeal was properly filed by, or on behalf of, a company director (and for the purposes of this decision I will accept that the appeal was properly filed), the information set out in the appeal does not disclose *any* valid reason to justify the cancellation of the Determination. The employer now asserts that the records in question have been produced, albeit outside the time limit set out in the Demand--this matter is more appropriately dealt with by the Director under section 86 of the *Act* assuming the Director is, in fact, prepared to cancel the Determination--she is certainly not obliged to do so. However, there is no legal basis for this Tribunal to order the cancellation of the Determination.

**ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$500**.

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**Kenneth Wm. Thornicroft, *Adjudicator***  
**Employment Standards Tribunal**