

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-

Wayne's Fresh Food and Beverage Company Inc.
doing business as Chileno Grille
("Chileno Grille" or the "employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE NO.: 98/55

DATE OF DECISION: April 27th, 1998

DECISION

OVERVIEW

This is an appeal filed by Raymond W.W. Hung presumably on behalf of Wayne's Fresh Food and Beverage Company Inc. doing business as Chileno Grille ("Chileno Grille" or the "employer") pursuant to section 112 of the *Employment Standards Act* (the "Act") from a Determination issued by the Director of Employment Standards (the "Director") on January 6th, 1998 under file number 85806 (the "Determination"). Mr. Hung holds himself out as the "manager" of Chileno Grille.

By way of the Determination, the Director issued a \$500 penalty pursuant to section 28 of the Employment Standards Regulation for failure to comply with a demand for production of employment records.

ISSUE TO BE DECIDED

Chileno Grille's position is, simply, that it fully complied with the demand for production of records. The employer also advanced a totally unsubstantiated claim of bias on the part of the Director's delegate who issued the Determination and, further, complained about (entirely proper) enforcement proceedings taken by the Director pursuant to section 89 of the *Act*. As I consider these latter two issues to be completely frivolous, I shall not deal with them further [see section 114(1)(c) of the *Act*].

FACTS

On October 22nd, 1997 the Director's delegate wrote to the employer advising that a complaint had been filed by a former employee, Phillip Croft, and requesting certain employment records relating to Mr. Croft including work schedules, payroll records, daily time records and his Record of Employment. The various employment records were to be produced within 20 days of the date of the letter.

The employer responded to the Director's delegate's October 22nd letter by way of a letter dated November 14th, 1997. The employer, in its November 14th letter, set out its position regarding the various allegations made by Mr. Croft but did not produce *any* of the records that been requested by the Director's delegate.

On November 4th, 1997 the Director's delegate again wrote to the employer advising that a further complaint had been received relating to another former employee, Ms. Kimberly King. The November 4th letter continues: "**Within 13 days from the date of this letter** please forward her final wages and vacation pay to my attention, payable to Ms. King without further delay. If she has

been fully paid please provide all daily time records, payroll records and canceled (sic) cheques for her for verification purposes.” (**boldface** in original)

The employer did not reply to the Director’s delegate’s November 4th letter and, accordingly, the delegate issued a “Demand for Employer Records” on November 14th, 1997 (the “Demand”). The Demand, issued pursuant to section 85 of the *Act*, required the employer to “disclose, produce and deliver” particular employment records relating to both Mr. Croft and Ms. King by no later than 4:30 P.M. on November 28th, 1997 at the Burnaby Employment Standards Branch office. By way of two very brief letters, both dated November 27th, 1997, Chileno Grille provided some information regarding both Mr. Croft and Ms. King but *did not provide the employment records as set out in the Demand*. The letter with respect to Mr. Croft simply set out his wage rate, job description and probation period while the letter relating to Ms. King simply set out the employer’s position that, although a cheque had been issued to Ms. King, it had not been cashed and that a new cheque would be issued “as soon as possible”--no explanation was given as to why Ms. King’s cheque was not enclosed as directed in the delegate’s November 4th letter

In my view, the employer’s two November 27th letters did not constitute sufficient, or indeed any, compliance with the November 14th Demand. Nevertheless, on December 3rd, 1997 the delegate again wrote to Chileno Grille and advised that a \$500 penalty would be imposed unless the employer provided the requested employment records--the employer was given until December 17th, 1997 to fully comply with the Demand. Apparently, the employer replied by way of an undated one-page handwritten letter but again the various employment records that had been demanded were not produced. On January 6th, 1998 the Determination was issued.

ANALYSIS

As is abundantly clear from the above chronology, a proper Demand was issued, the employer received this Demand but failed, despite being given every reasonable opportunity to do so, to produce the requested records.

ORDER

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

Kenneth Wm. Thornicroft, Adjudicator
Employment Standards Tribunal