

**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 -

Tahtsa Timber Ltd.  
(the " Appellant ")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** E. Casey McCabe

**FILE No:** 2000/103

**DATE OF DECISION:** March 31, 2000

**DECISION**

**APPEARANCES:**

Don Bahen for the employer

Pat Cullinane for the Director of Employment Standards

**OVERVIEW**

This is an appeal by Tahtsa Timber Ltd. (the “Employer”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) from a Determination dated February 1, 2000. That Determination imposed a penalty of \$500.00 upon the employer for failing to produce payroll records on demand.

**ISSUE**

Did the employer contravene Section 46 of the Employment Standards Regulations and, if so, is the imposition of the penalty appropriate?

**FACTS**

The employer is a timber company operating out of Burns Lake, British Columbia. On March 12, 1999 the complainant was laid off due to a seasonal shut down of mills in the area. The complainant was a logging truck driver. The complainant filed a complaint alleging that he was entitled to statutory holiday pay and compensation for length of service.

An informal demand for payroll records was initially presented to the employer on December 2, 1999. A representative of the employer contacted the investigating officer who told the employer which records were required. The investigating officer also informed the employer that a formal demand for payroll records would be forwarded.

A formal Demand for Employer Records (the “Demand”) dated January 5, 2000 was issued. That Demand sought payrolls records for the period of March 12, 1997 through March 12, 1999 for the complainant. The employer was required to disclose, produce and deliver the employment records as specified in the Demand by 4:00 p.m. Wednesday January 26, 2000. A representative of the employer signed a registered mail receipt confirming that the Demand was received by the employer on January 7, 2000.

On January 14, 2000 the appellant contacted the investigating delegate. He stated that the employer was unwilling to provide the required records. The employer’s representative stated that he believed the investigation should not go forward and that by not producing the records the investigation would not go forward.

The investigating officer explained that she was investigating a complaint which at that stage was an allegation. She explained that the employer has at this stage of the investigation the opportunity to provide records and any other relevant information to refute the allegation and claim made by the complainant. Without cooperation by the employer she informed the employer that any decision would be made with the information that was available. If the only information available was that provided by the complainant the employer's position could be compromised.

January 26, 2000 came and went. The employer had not produced the required records. On February 1, 2000 the Director's Delegate issued a Determination pursuant to Section 46 of the Employment Standards Regulations noting that the employer had failed to produce and deliver the records to the Director pursuant to the Demand that was made under Section 85(1)(f) of the *Act*. The Director's Delegate imposed a penalty of \$500.00 pursuant to Section 28(2) of the Employment Standards Regulations on the employer.

## **ANALYSIS**

Section 85 of the *Act* grants entry and inspection powers to the Director. More specifically Sections 85(1)(c) and (f) read:

“For the purposes of insuring compliance with this Act and the regulations, the Director may do one or more of the following:

- (c) Inspect any records that may be relevant to an investigation under this Part.
- (f) Require a person to produce, or to deliver to a place specified by the Director, any records for inspection under paragraph (c).”

The merits of the complaint can often only be determined through an inspection of payroll records. The *Act* requires employers to keep and to deliver those records when the Director makes a request for their production. The failure to produce or deliver the records invariably causes a delay in the investigation. That delay may prejudice the position of the employer or the employee who may be entitled to a minimum employment standard. In a complaint where the complainant alleges that he has not been paid statutory holiday pay or compensation for length of service the records requested in the demand for payroll records are relevant. The failure to produce the records has prejudiced the investigation.

The employer was aware of the Demand for the production of records. The employer had a conversation with the Director's Delegate in December 1999 and was served with a formal Demand dated January 5, 2000. On January 14, 2000 the employer contacted the Director's Delegate and informed the Delegate that he would not comply with the Demand. The due date of January 26, 2000 passed without the employer delivering the records. The Director's Delegate then issued the Determination imposing the \$500.00 penalty on the employer.

I digress at this point to note that the imposition of the \$500.00 penalty pursuant to Section 28(2) of the Employment Standards Regulations does not allow for any discretion to vary the penalty. The regulation is clear that the penalty is \$500.00. The penalty cannot be reduced. (Re: Rise Investments Ltd. (c.o.b. Nuffy's Donuts) BCEST # D116/97 (Crampton))

Rather than produce and deliver the required records the employer chose to appeal the imposition of the penalty. In its submission dated February 3, 2000 the employer goes into the merits of the allegations by the complainant that he was not paid statutory holiday pay or compensation for length of service. With respect, the employer has missed the point. The employer does not provide any basis in that submission or its February 16, 2000 submission to show why the Determination dated February 1, 2000 is wrong. The employer is attempting to argue the merits of the complainant's claim and by doing so argues that it is presenting a reasonable explanation for the failure to deliver the requested records. I do not accept this argument.

The employer's submissions set out its position with respect to the claim not the information that is required by the Director's Delegate to assess the claim. The employer, despite being given an opportunity in December to produce the records and again in January 2000, simply refused to comply with the informal and formal demands. The issue in this appeal is whether the employer breached Section 46 of the Employment Standards Regulations by failing to deliver employment records. It appears from the employer's submission that the records are available. It is also evident from the submissions of the parties that the employer knew which records it was required to produce but refused to produce them despite being given two opportunities to do so. I find no basis to relieve the employer from the imposition of the \$500.00 penalty.

**ORDER**

The Determination dated February 1, 2000 is confirmed.

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**E. Casey McCabe**  
**Adjudicator**  
**Employment Standards Tribunal**