

**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 -

Gregory Brothers Holdings Ltd.  
Operating Rex Regal  
("Gregory")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Norma Edelman

**FILE NO.:** 96/294

**DATE OF DECISION:** May 4, 2001

## DECISION

### OVERVIEW

This is an appeal by Gregory Brothers Holdings Ltd. operating Rex Regal (“Gregory”) under Section 112 of the *Employment Standards Act* (the “Act”) against Determination No. CDET 001929. The Determination was issued by a delegate of the Director of Employment Standards on April 12, 1996. In this appeal Gregory disputes the issuance of a penalty against it for contravening the record requirements under the Act.

The Director’s delegate determined, following his investigation, that Gregory failed to keep records of daily hours worked by Barry Davis (“Davis”) in contravention of Section 28 of the Act. Accordingly, pursuant to Section 98 of the Act and Section 28 of the *Employment Standards Regulation* (the “Regulation”) a penalty of \$500.00 was assessed against Gregory.

I have completed my review of Gregory’s appeal as well as the information provided to the Tribunal by the Director’s delegate and have decided to confirm the Determination.

### ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether the records of Gregory meet the requirements of Section 28 of the Act.

### FACTS

The Reason Schedule attached to the Determination shows the Director’s delegate concluded that pursuant to Section 98 of the Act and Section 28 of the *Regulation* a penalty in the amount of \$500.00 should be made against Gregory because:

- *Investigation of a complaint filed on November 11, 1995 showed that the Employer failed to keep a record of the hours worked each day by the complainant, Barry Davis.*
- *Failure to keep records of daily hours worked is a contravention of s. 28 of the Employment Standards Act.*

The Director's delegate attached the following documents to the Reason Schedule:

1. 1995 Payroll Record for Davis;
2. Section 28 (payroll records) of the *Act*; and
3. Section 28 (penalty for contravening a record requirement ) of the Regulation.

The 1995 Payroll Record is titled "Employee's Earnings". It covers the period March 25 to September 22, 1995. Either a "✓", "x", "Hol", or "Off" is entered on each day of the month during this period. In the legend it states that a "✓" denotes "worked" and an "x" denotes "not worked".

Gregory's appeal contains the following statements:

*The payroll pace (sic) clearly states when the employee worked. 99% of the employer's in this province use a similar method. Determination No. # 001929. The employee knew "✓" meant full shift and "x" meant no shift.*

In a letter dated May 28, 1996 to Gregory, the Tribunal provided a copy of all documents disclosed by the Director concerning this Determination. Gregory was requested to make any response by June 18, 1996.

A submission was received by the Tribunal from Gregory on June 20, 1996. The submission contains the following statements:

*If you look at the payroll page in question it is easy to see the days of work Mr. Davis earned. To take Mr. Tatchell's position that it does not clearly show Mr. Davis's employment and therefore contravenes section 28 of the Employment Standards Act and the company should be penalized (sic) is in itself punitive.*

## ANALYSIS

Section 28 of the *Act* requires an employer to keep a record of the hours worked each day by an employee.

The records provided by Gregory clearly do not indicate the hours that Davis worked each day. Whether a "✓" denotes a full shift or "worked", there is no indication of the specific hours worked each day. Accordingly, Gregory's records do not meet the requirements of the *Act*.

Given the above, I find nothing in Gregory's appeal which leads me to conclude that I should cancel or vary the Determination.

**ORDER**

I order under Section 115 of the *Act* that Determination No. CDET 001929 be confirmed.

---

**Norma Edelman**  
**Registrar**  
**Employment Standards Tribunal**

NE:jel