

**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 -

MOP SQUAD BUILDING SERVICES INC.  
("MOP SQUAD")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

ADJUDICATOR: Barry Goff

FILE NO: 96/612

DATE OF DECISION: APRIL 7, 1997

DECISION

**OVERVIEW**

This is an appeal by Mop Squad Building Services Inc. ("Mop Squad"), under Section 112 of the *Employments Standards Act* (the "Act") against determination CDET004081 issued by a delegate of the Director of Employment Standards (The "Director") on September 25, 1996.

The Director determined that Mop Squad had contravened the *Act* by failing to provide payroll records and imposed a penalty of \$500.00.

I have completed my review of the written submissions made by Mop Squad and the information provided by the Director's delegate and have concluded that the determination should be upheld.

**FACTS**

The Director's delegate wrote to Mop Squad on July 19, 1996, addressed to Mr. Jim Prakash, operator of the business. The letter informed Prakash that a complaint had been filed by a former employee, Nilam Adhikari, regarding wages owing by Mop Squad for work performed by Adhikari in the month of March 1996. The letter requests the employer to provide a cheque for \$79.88 to cover the total wages owing, including vacation pay and interest or, in the event that it does not agree that this is correct, to forward its payroll records to the delegate's attention, on or before August 2, 1996. The employer failed to respond and the Director's delegate provided the following reasons for the penalty determination:

The employer has failed to respond to voice mail messages left on business pager on July 16, 1996, August 13 and August 29, 1996, in which the officer explained purpose of call and requested call back.

The employer has failed to respond to a letter dated July 19, 1996, or demand for employer records, requesting compliance on or before August 2, 1996.

A copy of the relevant sections of the *Act* was attached to the demand, which contained a warning that: failure to comply with the record requirement may result in a \$500 penalty for each contravention as stated in Section 28 of the Regulations.

## ISSUES TO BE DECIDED

Has Mop Squad contravened Section 28 (payroll records) of the *Act*.

## ANALYSIS

Mop Squad offered the following reasons in support of its appeal:

- Nilam Adhikari was employed as an independent contractor (janitorial).
- Company policy requires subcontractors to post a security deposit, refundable upon termination, provided the contract performed is in reasonable condition.
- The contractor is required to provide equipment and cleaning materials.
- Adhikari was a student at the time and at her request the company showed compassion and waived the security deposit, equipment and cleaning material requirements.
- Adhikari was made aware that several complaints were received about her work performance.
- Adhikari's work performance did not improve as a result of which the contract was terminated by the customer. Adhikari should not expect to be paid for "negligence, shoddy or incomplete workmanship and causing a loss of revenue and your employer's goodwill."

The correspondence to Mop Squad indicated the employer had a choice to pay the wage demand or produce payroll records. The Demand for Employer Records required Mop Squad to produce:

1. All records relating to wages, hours of work and conditions of employment;
2. All records an employer is required to keep pursuant to Part 3 of the *Employment Standards Act* and Part 8, Sections 46 and 47 of the *Employment Standards Act Regulations*.

The Demand delivered to Mop Squad states: You are required to disclose, produce and deliver the employment records specified in this demand by 11:00 a.m. on August 2, 1996 at the offices of the Ministry of Labour, Employment Standards Branch, Suite 210 - 4946 Canada Way, Burnaby, BC. The demand also stated that **"failure to comply with the record requirement may result in a \$500 fine for each contravention as stated in Section 28 of the *Regulations*"**.

Section 98(1) of the *Act* states: (98)(1) if the Director is satisfied that a person has contravened the requirements of this *Act* or the *Regulations* or a requirement imposed under Section 100, the Director may impose a penalty on the person in accordance with the prescribed schedule of penalties.

Section 28 of B.C. Regulations 396/95 establishes a penalty of \$500 for each contravention of Section 28 of the *Act*.

Mop Squad provided no explanation for its failure to comply with the demand to produce payroll records.

The demand for employer records was sent by registered mail, receipt of which was acknowledged on behalf of Mop Squad by Prakash. In addition, the Director's delegate telephoned and left messages on the employer's voice mail. She did not receive the courtesy of a reply of any kind. The employer's view of its former employee's conduct does not relieve it of the obligation to produce payroll records as required by the demand. I have concluded that the imposition of a \$500 penalty was a reasonable exercise of the Director's discretionary powers under Section 98 of the *Act*.

## **ORDER**

I order, pursuant to Section 115 of the *Act*, that determination No. CDET004081 be confirmed.

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Barry J. Goff  
Adjudicator  
Employment Standards Tribunal

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