

An appeal

- by -

Rachel Guvi and Archie Guvi operating as  
Global Internet Systems Co.  
(the "Appellant")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

**ADJUDICATOR:** E. Casey McCabe

**FILE No.:** 2001/898

**DATE OF DECISION:** May 2, 2002

## DECISION

### APPEARANCES:

Archie Guvi

for the employer

J.R. Dunne

for the Director of Employment Standards

### OVERVIEW

This is an appeal by Rachel Guvi and Archie Guvi operating as Global Internet Systems Co. (the “Employer”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) from a Determination dated December 6, 2001. That Determination imposed a penalty of \$500.00 upon the employer for failing to produce payroll records on demand.

### ISSUES TO BE DECIDED

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

### FACTS

The Employer operates a computer store that also designs and maintains web sites. A complaint was filed with the Employment Standards Branch on August 1, 2001 by Saeid Shaban-Zanjani alleging that the Employer owed Mr. Shaban-Zanjani for regular wages not paid.

An informal demand for payroll records was sent to the Employer on August 28, 2001. The Employer did not respond to this letter and a formal Demand for Employer Records (the “Demand”), dated October 3, 2001 was issued. The Demand sought payroll records for the period December 15, 2000 through July 6, 2001 for the complainant. The employer was required to disclose, produce, and deliver the employment records specified in the Demand by noon October 16, 2001. The Demand was sent by registered mail and according to the material before me, was delivered to the Employer on October 5, 2001.

October 16, 2001 came and went. The Employer had not produced the required records. On December 6, 2001 the Director’s Delegate issued a Determination pursuant to Section 46 of the *Employment Standards Regulation* 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 Regulation* 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 regular wages for hours worked the records requested in the Demand are relevant. The failure to produce the records has prejudiced the investigation.

I digress at this point to note that the imposition of the \$500.00 penalty pursuant to Section 28(2) of the *Employment Standards Regulation* 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)* BC EST # 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 December 31, 2001 the employer goes into the merits of the allegations by the complainant that he was not paid wages for hours worked. The Employer states that Mr. Shaban-Zanjani was laid off in April 2001. With respect, the employer has missed the point. Even if Mr. Shaban-Zanjani was laid off in April 2001, a fact I am not concerned with in this appeal, the Employer would be required to produce the records up to the time of lay off. As such, the employer has not provided any basis in that submission or its March 7, 2002 submission to show why the Determination dated December 6, 2001 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. I find no basis to relieve the employer from the imposition of the \$500.00 penalty.

## **ORDER**

The Determination dated December 6, 2001 is confirmed.

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