

**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-

Gasal Enterprises Inc. operating Emilio's Restaurant  
(the "Appellant")

-of a Determination issued by-

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** E. Casey McCabe

**FILE NO.:** 98/75

**DATE OF DECISION:** April 16, 1998

**DECISION**

**APPEARANCES**

Emilio Salituro for Gasal Enterprises Inc.

Lesley A. Christensen for the Director of Employment Standards

**OVERVIEW**

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Gasal Enterprises Inc. operating as Emilio’s Restaurant (“Gasal”) of a Determination dated January 14, 1998 imposing a fine of \$500.00 upon Gasal for failing to respond in a timely manner to a demand for employer records dated December 17, 1997.

**ISSUE(S) TO BE DECIDED**

Should the employer be relieved from paying a \$500.00 penalty due to the fact it partially complied with the demand for records dated December 17, 1997?

**FACTS**

The appellant operates a restaurant in Burnaby, B.C. On December 17, 1997 Lesley A. Christensen, an Industrial Relations Officer, issued a demand for employer records seeking the records of a certain employee for the period of December 28, 1995 to May 29, 1997. That demand was sent by certified mail and receipt was acknowledged by the appellant on December 22, 1997. The demand required that the appellant produce all records relating to wages, hours of work and conditions of employment for the certain employee. The demand also required that the appellant produce all records an employer is required to keep pursuant to Part 3 of the *Employment Standards Act* and Part 8, Section 46 and 47 of the *Employment Standards Regulation* (the “Regulation”). The demand required that the records be delivered by January 2, 1998.

The appellant partially complied with the demand. The appellant submitted a record of the hours of work for the certain employee on January the 23rd, 1998. However, Ms. Christensen took the position that the employer had not fully complied with the demand as it had not provided the requested payroll records. On January 14, 1998 Mr. Kevin Rooney, Regional Manager, Employment Standards Branch, issued a determination which, amongst other orders, imposed a penalty of \$500.00 on the appellant for its breach of Section 46 of the *Regulation*.

On February 6, 1998 Mr. Emilio Salituro, on behalf of the employer, filed an appeal of the determination issued by the Director of Employment Standards. In its appeal the appellant stated that its accountant was on Christmas Holidays until the first week of January, 1998. The appellant further states that since his first accountant was no longer under his employment that he no longer held the time sheets for the first six months he was in business. The appellant states that he raised this belief with Ms. Christensen who informed him that he was required by law to keep the time sheets for “an allotted time period” and that if he did not do so he could be fined. The appellant further states that when his present accountant returned from holidays the accountant informed him that he had all the time sheets. The appellant then states that the time sheets were faxed to Ms. Christensen who appeared to base her decision on the evidence that she was given. The appellant further indicates in his reasons for appeal that “all other documents will be faxed Monday February 10/98.”

Ms. Christensen responded to the written appeal on February 11, 1998. She states in her letter that partial records in the form of hours of work records were received on January 23, 1998 but that as of the date of her letter the employer had not provided the requested payroll records.

## **ANALYSIS**

Section 79(3) of the *Act* allows the Director to fashion remedies that are appropriate for breaches of different sections of the *Act*. One of the remedies that is available to the Director is the imposition of a monetary penalty as set out in Section 98 of the *Act* and Sections 28 and 29 of the *Regulation*. In particular, Section 28(a) of the *Regulation* sets out the penalty for contravention’s of Section 25(2)(c), 27, 28, 29 and 48(3) of the *Act*. Section 28(b) includes the ability to impose sanctions for breaches of Sections 3, 13, 37.6(2) and 46 of the *Regulation*. The determination found that the appellant contravened Section 46 of the *Employment Standards Regulation* by failing to produce or deliver the records as required by the demand dated December 17, 1997. Furthermore, it appears from the submissions that although the employer partially complied with the demand on January 23, 1998 his promise to fully comply by February 10, 1998 went unfulfilled.

I find that the Director was within the scope of his jurisdiction under Section 79(3) and 98 of the *Act* in imposing the \$500.00 penalty upon the employer pursuant to Section 28 of the *Employment Standards Regulation*. Section 28 of the *Regulation* reads:

Penalty for contravening a record requirement – The penalty for contravening any of the following provisions is \$500 for each contravention:

- (a) section 25(2)(c), 27, 28, 29, 37(5) or 48(3) of the Act;
- (b) section 3, 13 or 46 of this regulation

There is no discretionary element involved under Section 28 in the assessment of the penalty. The statute clearly states that the penalty for each contravention is \$500.00. It is clear that the employer breached the Act and the Regulation in failing to produce the documents as required in the allotted time or, for that matter, within a time frame that it had stated it would produce the documents and to which the Director's delegate agreed. I see no reason to overturn the determination dated January 14, 1998.

**ORDER**

I confirm the Determination dated January 14, 1998. I confirm the other aspects of the award. Interest is to be paid to the date of this award and beyond until payment is made.

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