

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-

North Coast Forest Products Ltd.
("North Coast" or the "employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE NO.: 98/106

DATE OF DECISION: May 13, 1998

DECISION

OVERVIEW

This is an appeal brought by North Coast Forest Products Ltd. (“North Coast” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on January 28th, 1998 under file number 087-670 (the “Determination”).

The Director determined that North Coast failed to comply with a demand for production of employer records and, accordingly, issued a penalty in the amount of \$500.

ISSUE TO BE DECIDED

The employer’s appeal in this case raises the same issue, and is based on essentially identical facts, as the appeal filed by an associated firm, A.B. Lumber Co. Ltd., an appeal that I dismissed in EST Decision No. D198/98 (issued contemporaneously with these Reasons).

In short, the employer contends that the Director’s delegate failed to respond to a request for “particulars” prior to issuing the Determination.

FACTS

A “Demand for Employer Records” (the “Demand”) was issued on December 8th, 1997. I should add that a further, essentially identical, “Demand for Employer Records” was issued on February 2nd, 1998. The employer has similarly refused to comply with that demand (and the time for compliance expired on February 11th, 1998), however, this latter demand is not before me and is not, so far as I am aware, the present subject of a determination.

Pursuant to the Demand, North Coast was directed to “disclose, produce and deliver employment records for...all current employees (as of November 30th, 1997)” spanning the period from the later of December 1st, 1995, or the date of hire, to November 30th, 1997. The employment records demanded included all payroll and other records the employer was obliged to keep and maintain pursuant to Part 3 of the *Act* and Part 8 of the *Employment Standards Regulation*. The records were to be produced at the Employment Standards Branch office situated in Surrey, B.C. on or before 3:30 P.M. on January 5th, 1998.

On December 19th, 1997, Mohinder Dhaliwal on behalf of North Coast, requested an extension of the deadline for production of the records from January 5th to January 22nd, 1998. This extension request was granted by the Director’s delegate.

Subsequently, the employer, in turn, retained an independent consultant and then legal counsel both of whom spoke with the Director’s delegate regarding the production of employment records. The

Director's delegate maintained a consistent position that the records would have to be produced by the extended deadline, namely, January 22nd, 1998.

On January 22nd, 1998, the Director's delegate received, by fax, a letter from yet another solicitor who advised that he had been retained by North Coast (the essentially identical letter was also faxed to the Director on behalf of A.B. Lumber). This solicitor's letter continued:

“Needless to say, your request for the complete payroll records for all current employees is not reasonable as it does not set forth what employees have made such a complaint so as to enable my client to produce those particular payroll records. In addition, I am made to understand that a number of employees have indicated that they do not wish to have their payroll records disclosed and as such I can only assume that those individuals have not filed a complaint.

That being so, I would request the necessary particularization and will instruct my client accordingly.”

This latter letter from North Coast's solicitor constitutes the employer's demand for particulars that was allegedly improperly ignored by the Director's delegate. I note that this particular letter is not a request for a further extension of the deadline for the production of the demanded records; it is, in effect, written notice that the employer intends to refuse to comply with the Demand as issued. The employer's solicitor acknowledges in his appeal form that the Director's delegate spoke with the solicitor's office on January 22nd (*i.e.*, the extended deadline for production) and reiterated her position that the relevant employment records must be produced on or before the deadline.

ANALYSIS

I would dismiss this appeal for the very same reasons as set out in my decision in the A.B. Lumber Co. Ltd. appeal (EST Decision No. 198/98).

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$500**.

Kenneth Wm. Thornicroft,
Adjudicator
Employment Standards Tribunal