

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 -

CDJ Enterprises Ltd.
(the “ Appellant ”)

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: E. Casey McCabe

FILE No.: 2000/113

DATE OF DECISION: May 17, 2000

worked was not tracked in great detail. The employer argues that it did not purposely attempt to impede the investigation. Rather, the employer argues that because it thought the employee in question was a manager did not keep the detailed records required by the *Act*. The employer further argues that its attempt to fill in the hours worked after the fact was not an attempt to impede the investigation but rather was an attempt to cooperate with it by providing the information as best it could.

ANALYSIS

The employer argues that it had no intent to breach the requirements of the *Act* or impede the investigation. However the employer recognizes that once it had read the aforementioned guide it had improperly classified the complainant as a manager. The employer states that it commenced keeping proper records once it had realized its error.

The Tribunal does not recognize ignorance of the law as a defence to penalties imposed for failing to keep proper payroll records. (See Re: *Piete* BC EST #D032/99; *Skalenda (C.O.B. Fine Line Traffic Marking)* BC EST #D196/99). The assessment of a penalty under Section 46 of the *Regulation* for a breach of Section 28 does not require subjective intent by the employer. The test is objective. Did the employer fail to keep the proper records under Section 28 and did the employer fail to produce the information and records requested upon demand by the Director's Delegate? Unless a reasonable excuse is given for the failure to keep the records or comply with the demand the Director has the discretion to impose a penalty. The imposition of a penalty does not require a finding by the Director that an employer willfully or intentionally failed to keep or produce proper records.

The employer argues that its honest but mistaken belief that the complainant was a manager coupled with an assertion that it has kept proper records once it came to the conclusion that the complainant was not a manager should mitigate any prior non-compliance. I am not able to accept that argument as a basis to mitigate the penalty. The employee never was a manager – he was at all times an employee. Therefore the employer was required to keep proper payroll records.

The penalty for contravening a record requirement is set at \$500.00 by the *Act*. Section 28 of the *Employment Standards Regulation* reads:

28. *Penalty for contravening a record requirement* – *The penalty for contravening any of the following provisions is \$500.00 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 element of discretion involved in assessing the penalty. The statute sets the penalty at \$500.00. The Tribunal has no discretion to reduce that amount once a breach of Section 28 of the *Act* or Section 46 of the *Regulation* is established.

ORDER

The Determination dated February 8, 2000 is confirmed.

E. Casey McCabe
Adjudicator
Employment Standards Tribunal