

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-

Wm. Clark Ford Sales Ltd.

(“Clark Ford”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE NO.: 97/156

DATE OF DECISION: June 16th, 1997

DECISION

OVERVIEW

This is an appeal brought by Wm. Clark Ford Sales Ltd. (“Clark Ford” 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 February 20th, 1997 under file number ER 005-487 (the “Determination”). The Director issued a penalty in the amount of \$500 as against Clark Ford based on its failure to maintain adequate payroll records regarding one of its employees (Melvyn V. Lepin).

In an undated memo attached to the Appeal of Determination the employer’s General Manager stated:

“We were penalized \$500 for not keeping proper payroll records. We did supply daily time records to the E.S. Branch by supplying floor schedule(s) pursuant to which commission salespeople work.

Enclosed please find copies of the work schedule(s) the salespeople are required to work.

We therefore request that the penalty be eliminated.”

ANALYSIS

Pursuant to section 28 of the *Act* an employer is obliged to maintain certain payroll records, for a period of seven years after termination, for each employee. In order to meet this record-keeping obligation, the records must contain such things as the employee’s name, address, date of birth, residential address and telephone number, employment commencement date, actual hours worked each day, rate of pay, benefits paid, vacation leave entitlement and vacation pay earned/paid, the basis for determining pay for each pay period and payroll deduction particulars.

If an employer fails to maintain payroll records as mandated by section 28 of the *Act*, a \$500 penalty may be imposed by the Director (see Section 28 of the *Employment Standards Regulation*).

In the present case, a proper demand for production of payroll records was issued on January 23rd, 1997. The work schedules produced in response to this demand do not meet the section 28 requirements, and in particular, the requirement to show an employee’s *actual hours worked each*

day [see s. 28(1)(c.1) of the *Act*]. A work schedule is not a statement of hours actually worked; it is merely an indication of the hours that an employee is expected to work. A work schedule may not accurately reflect the actual hours worked by a particular employee for a number of reasons--illness, rescheduling, shift exchanges, overtime etc.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated February 20th, 1997 and filed under number ER 005-487, be confirmed as issued in the amount of \$500.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal