

An appeal

- by -

Meinhardt Fine Foods Inc.

- 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: John M. Orr

FILE No.: 2001/158

DATE OF DECISION: May 4, 2001

DECISION

OVERVIEW

This is an appeal by Meinhardt Fine Foods Inc. (“Meinhardt” or “the employer”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) from a Determination (File No.078812) dated January 26, 2001 by the Director of Employment Standards (the “Director”) imposing a \$500.00 penalty pursuant to section 28(b) of the Employment Standards Regulation (the “Regulation”).

The penalty determination was issued because a delegate of the Director concluded that complete records were not delivered as demanded and that there was no reasonable explanation for the failure to deliver accurate and complete records.

Meinhardt appeals on the grounds that all of the records demanded were delivered.

PRELIMINARY ISSUE

In case there is some issue about whether or not the appeal in this case was filed within the time limits allowed, I hereby extend the time period for requesting the appeal pursuant to section 109 of the *Act*. It is noted that the Director does not oppose the extension of time.

ANALYSIS

I have read the penalty determination, the submissions of the employer and those of the director’s delegate and have concluded that the penalty determination in this case should be cancelled.

A demand for employer records dated January 4, 2001 was delivered by hand to legal counsel for the employer requiring production of employment records in relation to a named employee. The documents were required to be produced on or before Friday January 19, 2001.

In the intervening time period there were discussions between an agent for the employer and the director’s delegate in an effort to settle the claim. The employer’s agent in fact offered to pay the claim in full on January 18, 2001. The director’s delegate nevertheless insisted on production of the documents that had been demanded.

Late in the afternoon of Friday January 18th, legal counsel for the employer contacted the director’s delegate and requested an extension of time for the production of the documents. The delegate would only give an extension until the end of business on Monday January 22nd.

On January 22nd the employer delivered to the delegate a large volume of photocopied records. The delegate complains that she had difficulty understanding the records. She then invited the complainant to review the records and to comment on them. The complainant, perhaps as to be expected, had some dispute with the records.

Over the next two or three weeks the delegate who was investigating the complaint had a number of conversations with the employer as to exactly what records she required. One of the records that she demanded was the "shift schedules". While the *Act* requires the employer to display shift schedules, these are not records that are required to be kept under the *Act* or *Regulation*. The employer had not kept the shift schedules once the shift work completed. The employer offered to assist the delegate in understanding the records that had been delivered and even resubmitted some of the records put together in a different format.

In the meantime, on January 26 2001, a different delegate issued the penalty determination. It is evident that this determination was issued because the delegate was having difficulty understanding the records and appeared to be frustrated as a result of previous dealings with this employer.

It is inappropriate to penalize the employer on this occasion because of some prejudice arising out of past dealings. It is clear from the delegate's own submissions that the employer had substantially complied with the demand that was issued on January 4 2001. If there were difficulties understanding those documents the delegate could have attended at the office of the employer to seek further clarification or could have taken up the employer's offer to assist the delegate. On the material presented to me there is no indication that the employer was not fully participating in the investigation or attempting to frustrate the investigation.

The issuing of a penalty determination in this case could not create a disincentive as the employer had cooperated and substantially complied.

ORDER

I order, under Section 115 of the *Act*, that the Determination be cancelled.

JOHN M. ORR

**John M. Orr
Adjudicator
Employment Standards Tribunal**