

**BC EST # D223/96**

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act* S.B.C. 1995, C. 38

- by -

Parmar Excavating Ltd.  
("Parmar")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** David Stevenson

**FILE No.:** 96/381

**DATE OF DECISION:** August 22, 1996

## **DECISION**

### **OVERVIEW**

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Parmar Excavating Ltd. (“Parmar”) of Determination No. CDET 002483 issued by the Director of the Employment Standards Branch (the “director”) on June 5, 1996. That Determination assessed a penalty of \$500.00 against Parmar pursuant to Section 98 of the *Act* for the failure of Parmar to produce records following a demand issued by a representative of the director pursuant to Section 85 of the *Act* on February 23, 1996.

Parmar seeks to excuse his failure to respond to the demand by reason of the failure of his accountant to have the employment records ready at the time they were demanded and because he could not locate some of the employees for whom records were sought to attempt to settle the matter.

### **ISSUE TO BE DECIDED**

The issue to be decided is whether Parmar has provided any basis for setting aside the penalty imposed for his failure to produce the records upon demand by the director.

### **FACTS**

As a result of complaints received by the director from employees of Parmar, the director issued a demand for production of employment records on February 23, 1996. The demand was received by Parmar. Following receipt, Parmar requested a meeting with the complainants to attempt to settle the matters at issue. A meeting was held on March 19, 1996. No records had been produced by Parmar up to the date of that meeting and none were produced at that meeting. Parmar assured the representatives of the director that the complaints would be resolved. Up to the date of the Determination under appeal, Parmar had not communicated with the director or any of her representatives about whether the complaints had been resolved. All attempts to contact Parmar failed. In its appeal, Parmar says it has settled two of the complaints. Others are still outstanding and the director’s delegate is unable to issue any Determination because of the failure of Parmar to provide the employer records which will assist the delegate in determining whether any contravention of the *Act* has occurred and, if so, what Parmar’s liability is for that contravention.

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The Demand for Employer Records issued to Parmar clearly sets out the requirement to produce, the time, place and date by which the production must take place and the consequences of a failure to comply. It also clearly sets out what is required of Parmar.

Parmar never contacted the director or her representative at any time prior to the issuance of the Determination to suggest some difficulty in assembling the records required to be produced.

### **ANALYSIS**

I do not wish to suggest there may never be a justifiable reason for failing or refusing to produce employer records to a representative of the director upon the issuance of a valid Demand for Employer Records, but Parmar has not produced one in this appeal.

At the time the demand was made there existed a statutory purpose for it . There still exists a statutory purpose. There is no basis for non-compliance and there is no basis for this appeal. The appeal is dismissed.

### **ORDER**

Pursuant to Section 115 of the *Act*, I order Determination No. CDET 002483 be confirmed.

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**David Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**

**DS:sr**