

An appeal

- by -

Regions Group of Companies International Trading Ltd.  
operating as Regions Training Institute  
("Regions Group")

- 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:** M. Gwendolynne Taylor

**FILE No.:** 2003A/142

**DATE OF DECISION:** July 15, 2003

## DECISION

### OVERVIEW

This is an appeal filed by Regions Group of Companies International Trading Ltd. operating as Regions Training Institute (“Regions Group”) from a Determination of the Director of Employment Standards (“Director”) dated April 3, 2003. In the Determination, the Director found that Regions Group had contravened s. 85(1)(f) of the *Act* by failing to produce and deliver records by February 28, 2003, as demanded. Pursuant to s. 29 of the *Employment Standards Regulation*, the minimum administrative penalty is \$500.00.

Regions Group has asked that the Determination be cancelled on the grounds that the Director failed to observe the principles of natural justice.

### ISSUE

Has the appellant substantiated the claim that the Director failed to observe the principles of natural justice?

### APPLICABLE LEGISLATION:

#### *EMPLOYMENT STANDARDS ACT*

Entry and inspection powers

- 85 (1) For the purposes of ensuring compliance with this Act and the regulations, the director may do one or more of the following:
- (a) enter during regular working hours any place, including any means of conveyance or transport, where
    - (i) work is or has been done or started by employees,
    - (ii) an employer carries on business or stores assets relating to that business,
    - (iii) a record required for the purposes of this Act is kept, or
    - (iv) anything to which this Act applies is taking place or has taken place;
  - (b) inspect, and question a person about, any work, material, appliance, machinery, equipment or other thing in the place;
  - (c) inspect any records that may be relevant to an investigation under this Part;
  - (d) on giving a receipt for a record examined under paragraph (c), remove the record to make copies or extracts;
  - (e) require a person to disclose, either orally or in writing, a matter required under this Act and require that the disclosure be under oath or affirmation;
  - (f) require a person to produce, or to deliver to a place specified by the director, any records for inspection under paragraph (c).
- (2) Despite subsection (1), the director may enter a place occupied as a private residence only with the consent of the occupant or under the authority of a warrant issued under section 120.

## ***EMPLOYMENT STANDARDS REGULATIONS***

### Administrative penalties

- 29 (1) Subject to section 81 of the Act and any right of appeal under Part 13 of the Act, a person who contravenes a provision of the Act or this regulation, as found by the director in a determination made under the Act, must pay the following administrative penalty:
- (a) if the person contravenes a provision that has not been previously contravened by that person, or that has not been contravened by that person in the 3 year period preceding the contravention, a fine of \$500;
  - (b) if the person contravenes the same provision referred to in paragraph (a) in the 3 year period following the date that the contravention under that paragraph occurred, a fine of \$2 500;
  - (c) if the person contravenes the same provision referred to in paragraph (a) in the 3 year period following the date that the contravention under paragraph (b) occurred, a fine of \$10 000.
- (2) The penalties imposed under subsection (1) apply to the person only in respect of the location where the contravention occurred.
- (3) Despite subsection (2), if an employer dispatches an employee from one location to another worksite, a contravention that occurs at that other worksite is considered to be, for the purposes of subsection (1), a contravention at the location from which the employee was dispatched.
- (4) If an administrative penalty is imposed on a person, a prosecution under the Act or this regulation for the same contravention may not be brought against the person.
- (5) A person who is subject to an administrative penalty under this section must pay the amount to the minister charged with the administration of the Financial Administration Act.
- (6) Subsections (1) to (5) apply only in respect of contraventions that occur on or after November 30, 2002.
- (7) In subsection (8), "former provisions" is a reference to sections 28 and 29 and Appendix 2 of this regulation, as those provisions read immediately before November 30, 2002.
- (8) The former provisions apply, despite their repeal, for purposes of contraventions of the Act and this regulation that occurred before November 30, 2002.

[am. B.C. Reg. 342/97; 307/2002, s. 10, effective at the end of the day on November 29, 2002 (B.C. Gaz. December 3, 2002).]

### Production of records

- 46 (1) A person who is required under section 85 (1) (f) of the Act to produce or deliver records to the director must produce or deliver the records as and when required.
- (2) No person may restrict or attempt to restrict the director from making an entry under section 85 (1) (a) of the Act.

[am. B.C. Reg. 269/98.]

## **FACTS**

The Director received two complaints against Regions Group. In the course of investigating the complaints the Director made a demand for employer records, with a deadline of February 28, 2003. On March 3, 2003, a representative of Regions Group contacted the Director to advise that he had been out of town and that all the records were being held by the former landlord. The representative indicated he was hoping to have access to the files by the end of March 2003. He provided the name and telephone number for a lawyer representing Regions Group.

According to the Director's submission on the appeal, the lawyer provided the name of the property manager, who the Director's delegate contacted. In the Determination, the delegate stated that the manager's information was that Regions Group had retrieved all documents in late November or early December 2002 and that the landlord did not have any of Regions Group's documents.

On March 11 and April 1, 2003, the delegate left messages for Regions Group. As of April 3, 2003 the delegate had not received a reply and issued the Determination.

## **ARGUMENT**

In the appeal, Regions Group claims that the information provided by the property manager was all lies and that, as of the date of the appeal, most of the files still had not be retrieved. Regions Group asked that the Tribunal arrange an oral hearing.

The Director responded to the appeal outlining the chronology, as set out above. In addition, the Director stated that the delegate had been notified by Canada Customs and Revenue Agency that employer files were seized but that no employee payroll records relating to the complainants were seized. The Director submitted that the Determination was issued based on the information available at that time and asked that the Tribunal confirm the Determination.

## **ANALYSIS**

Regions Group did not dispute the Director's statement that the delegate had left messages on March 11 and April 1, 2003. Regions Group has not clarified, or explained the basis for, the allegation that the Director breached the principles of natural justice.

Regions Group had asked that the Tribunal convene an oral hearing. The Vice Chair determined that the appeal would be decided by an adjudicator based on the written submissions. Given that the only issue here is the failure to produce records, which results in an administrative penalty, I agree with the Vice Chair that there is no apparent reason for an oral hearing.

I find that Regions Group has failed to substantiate its claim that the Director breached the rules of natural justice. Based on the undisputed facts, the Director was prepared to give Regions Group an extension of time to produce records and gave Regions Group ample opportunity to respond to the continuing investigation prior to issuing the Determination.

**ORDER**

Pursuant to section 115 of the *Act*, I confirm the Determination dated April 3, 2003.

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**M. Gwendolynne Taylor**  
**Adjudicator**  
**Employment Standards Tribunal**