

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 -

Caba Mexican Restaurants Ltd.
("Caba")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 96/488

DATE OF DECISION: September 10, 1996

DECISION

OVERVIEW

This is an appeal by Caba Mexican Restaurants Ltd. (“Caba”), under Section 112 of the *Employment Standards Act* (the “Act”), against Determination No. CDET 003529 which was issued by a delegate of the Director of the Employment Standards on August 2, 1996. The Determination imposed a penalty of \$500.00 for failing to keep payroll records as required under Section 28 of the *Act*.

I have reviewed the appeal and written submission made by Caba as well as the information provided by the Director’s delegate.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether there are any grounds on which to cancel the Determination.

FACTS

The reason schedule attached to the Determination sets out the following sequence of events:

The employer was advised of the nature of the complaint by letter dated 27 June, 1996. This letter requested the submission of payroll records no later than 8 July, 1996 if the employer disputed the claim. By means of a telephone call the employer’s accountant, Mr. Nordin, did dispute the claim but no records were provided.

A formal Demand for Employer Records was sent out to the employer by Certified Mail on 9 July, 1996. This Demand required the production of payroll records concerning the above - noted employee no later than 11 o’clock on 24 July, 1996.

The response to this Demand (on 15 July, 1996) was a single time card and a note.

On 17 July, 1996 the employer was again advised by mail that the records provided did not meet the requirements of the *Employment Standards Act*. A copy of section 28 of the *Act* and a copy of *Guide to the Employment Standards Act* were enclosed with the letter.

There was no further response by the employer; accordingly, a penalty of \$500.00 is imposed pursuant to section 28 of the *Regulation*.

In its appeal, Caba states that it keeps all records for its employees. It also argues that it is being penalized by the complainant's failure to maintain proper hours - of - work records for himself and other employees.

The complaint was the general manager of a restaurant which Caba operates. His complaint concerning unpaid wages caused the Director's delegate to write the letter dated June 27, 1996.

Caba's appeal includes a copy of an undated and unsigned letter addressed to the Director's delegate from Hanif Hirji, Integrated Management Services. The Director's delegate received that letter on August 13, 1996 along with a copy of payroll/earnings records for the period of May 1, 1996 to May 24, 1996.

ANALYSIS

This appeal deals only with the \$500.00 penalty imposed by Determination No. CDET 003529. It does not deal with the question of whether or not any wages are owed to the Carlos Campos.

Section 28 of the *Act* describes the payroll records which an employer must keep for each employee.

Section 28 of the *Employment Standards Regulation* establishes a penalty of \$500.00 for each contravention of Section 28 and certain other sections of the *Act*.

The Demand for Employer Records which was delivered by certified mail on July 19, 1996 required the following employment records to be delivered to the Employment Standards Branch by July 24, 1996:

1. all records relating to wages, hours of work, and conditions of employment.
2. all records an employer is required to keep pursuant to Part 3 of the *Employment Standards Act* and Part 8, Section 46 & 47 of the *Employment Standards Act Regulation*.

The Demand contained a clear statement that failure to comply may result in a penalty of \$500.00 for each contravention. Caba's response on July 15, 1996 did not contain the information that it was required to provide to the Director's delegate and his letter of July 17, 1996 confirmed that.

At the time that the Determination was issued on August 2, 1996 Caba had not provided the information which the Demand required it to provide on or before July 24, 1996.

Caba's appeal does not give any explanation or reasons for its failure to provide the information on or before July 24, 1996. In the absence of any reasons for Caba's failure to comply with the Demand, I find that there are no grounds on which to cancel or vary the Determination.

ORDER

I order, under Section 115 of the *Act*, that Determination No. CDET 003529 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC:sr