

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 -

Empire International Investment Corporation and
Country Club Estates Ltd.
(the “employer”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Cindy J. Lombard

FILE NO.: 1999/201

DATE OF DECISION: June 29, 1999

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Empire International Investment Corporation and Country Club Estates Ltd. (the “employer”) from a Determination issued on March 11, 1999, by a delegate of the Director of Employment Standards (the “Director”). In that Determination, the Director found that the employer must pay a penalty of \$500.00, having been found in contravention of Section 28 and 46 of the *Employment Standards Act*’s regulations in failing to produce proper payroll records.

Following a complaint by former employees, Ron Zelinski and Debbie Zelinski (the “Zelinski’s”), the employer had made unauthorized deductions from their wages, the Director demanded that the employer produce employer records including all records relating to wages, hours of work and conditions of employment and all records that an employer is required to keep pursuant to Part 3 of the *Employment Standards Act* and Part A, Section 46 and 47, of the *Employment Standards Act* regulations. These records were to be produced on or before January 20, 1999, at noon.

Following this demand the Director met with the employer at a fact-finding conference on March 4, 1999, and the employer admitted that no records were kept of the hours worked by the employees on each day. The Determination was imposed under Section 28(b) of the *Employment Standards Act* regulations.

The employer makes various arguments, which included that the payroll records are not relevant and that the Determination was not clear as to the specific statutory intravention and support for imposition of the fine.

ISSUE TO BE DECIDED

The issue to be decided is whether the Determination issued by the Director should be set aside.

FACTS AND ANALYSIS

Section 46 of the regulations provides as follows:

“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.”

Section 28(1) of the Act requires as follows:

“For each employee, an employer must keep records of the following information:

- (d) the hours worked by the employee on each day, regardless of whether the employee is paid on a hourly or other basis;”

Section 28 of the regulations provides for a penalty of \$500 for each contravention of any sections which include both Section 28 and 46 of the regulations:

- “28. The penalty for contravening any of the following provisions is \$500.00 for each contravention.
 - (a) Section 25(2)(c), 27, 28, 29, 37(5) or 48(3) of the Act;
 - (b) Section 3, 13 or 46 of this Regulation.

The facts herein are clear, namely, that the employer did not keep records containing the hours worked by the employees on each day as required by Section 28 of the Act and therefore, pursuant to Section 28 of the regulations, the fine of \$500.00 for contravention of Section 28 was properly made by the Director.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination of this matter dated March 11, 1999, be confirmed in the amount of \$500.00.

Cindy J. Lombard
Adjudicator
Employment Standards Tribunal