

**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 -

Alice Elaine Devereaux and Denise Lynne Devereaux operating as  
Impromptu Hair Design  
("Impromptu")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 97/290

**DATE OF DECISION:** June 30, 1997

## DECISION

### OVERVIEW

This is an appeal by Alice Elaine Devereaux and Denise Lynne Devereaux operating as Impromptu Hair Design (“Impromptu”), under Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination dated April 10, 1997 which was issued by a delegate of the Director of Employment Standards. The Determination required Impromptu to pay the sum of \$500.00 because the Director’s delegate found that Impromptu’s payroll records “...did not clearly describe the wage rate for commission sales” in contravention of Section 28 of the *Act*.

Impromptu’s appeal seeks to have the Determination set aside on the grounds that the payroll and other records which were submitted to the Director’s delegate met the requirements of the *Act*. In particular, Impromptu argues that the documents provided to the Director’s delegate included:

1. The daily record sheets on which the employees entered hours worked daily and / or gross sales (including G.S.T.);
2. Bookkeeper records which showed hours worked and gross sales for commission (G.S.T. and P.S.T. were deducted where applicable and commission paid on the net amount);
3. A covering note stating the hourly rate and commission rate for the employee in question.

### ISSUE TO BE DECIDED

Should the Determination be varied, cancelled or confirmed?

### ANALYSIS

Section 28 of the *Act* requires employers to keep detailed payroll records for each employee. Specifically, Section 28(1)(c) requires the employer to record “the employee’s wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis.”

The Director’s delegate states in the Determination that “...the records did not clearly describe the wage rate for commission sales.” Impromptu’s appeal states that the records submitted to the Director’s delegate included “...a note stating the hourly rate and commission rate for the employee in question.”

This suggests that the finding made by the Director's delegate was valid. If the payroll records had described the commission rate clearly, an explanatory note would not have been necessary.

Section 85(1)(c) of the *Act* describes the powers given to the Director of Employment Standards to inspect any records that may be relevant to an investigation under Part 10 of the *Act*. Section 85(1)(f) permits the Director to:

*require a person to produce, or to deliver to a place specified by the Director, any records for inspection under paragraph (c).*

Section 46 of the *Regulation* (B.C. Reg. 396/95) states:

*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.*

The penalty was imposed by the Director's delegate under authority given by Section 28 of the *Regulation*.

Section 28 of the *Regulation* establishes a penalty of \$500.00 for **each contravention** of Section 28 of the *Act* and Section 46 of the *Regulation*. Thus, the Director has no discretion concerning the amount of the penalty to be imposed once she has determined that a contravention of Section 28 has occurred.

Section 29(2) of the *Regulation* sets out the penalty for contravening a provision or requirement listed in Appendix 2 of the *Regulation*. In particular, Section 29(2)(a) of the *Regulation* imposes a \$0 penalty for contravening a "specified provision" for the first time. However, Section 28 of the *Act* is not a "specified provision". I conclude from this that the Legislature intended that a \$500.00 penalty would be imposed for **each** contravention of Section 28 of the *Act*.

## **ORDER**

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

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**