

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 -

J.R. FURNITURE PLACE LTD.
("JR")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Barry Goff

FILE NO.: 96/393

DATE OF DECISION: May 6, 2001

DECISION

OVERVIEW

This is an appeal brought by J.R. Furniture Place Ltd. (JR) pursuant to Section 112 of the *Employment Standards Act* (the "Act") from determination No. CDET 002593 issued by the Director of Employment Standards (the "Director") on June 17, 1996. The Director determined that JR had breached Section 46 of the Employment Standards Regulations (Production of Records) and imposed a penalty of \$500 pursuant to Section 98 of the Act and Section 28 of the Regulations.

FACTS

JR was advised by regular mail on May 14, 1996, that a complaint had been filed by one of its employees. The letter set out the nature of the complaint and required either remittances of the amount owing or submission of payroll records to be delivered to the Employment Standards Branch by May 24, 1996. JR did not respond to this letter. The Branch issued a second letter by Registered Mail on May 27, 1996 requiring a response by 10:00 am on June 11, 1996. The post office confirmed delivery of the demand but JR did not respond. The Branch issued a penalty of \$500 for failure to comply with its demand pursuant to Section 28 of the Regulations. In its reasons for appeal, JR maintains that it spoke to the complainant, and made arrangements to settle the complaint. JR presumed that the complainant would contact the Branch and that the file would be closed. JR's principal says she had forgotten to "fax or mail in all payroll records for Mr. Ram (the complainant)". The Employment Standards Officer in this case, Wayne Mackie, confirms by letter that the complainant did call him on June 25, 1996 "to advise that an agreement had been reached to pay one-half of the wages owing and the remainder to be paid in September 1996". Mackie also maintains that the employer's reasons for failure to supply the records on demand were considered and it was decided that the reasons were insufficient to grant cancellation of the penalty.

ANALYSIS

The first notice issued by the Branch requesting that JR remit monies for vacation pay or its payroll records by May 24, 1996, provided a clear request to JR with an indication that if it failed to provide a response further action would be taken. It also requested that JR respond by telephone to the writer in the event that its principal wished to discuss the matter further. JR ignored that letter. It did not provide the payroll records or a cheque nor did it bother to call the writer. The second notice is a clear demand for employer records which set out the section of the Act that required disclosure and production, provided a date for production and in large letters at the bottom provided the following comments:

Failure to comply with a record requirement may result in a \$500 penalty for each contravention as stated in Section 28 of the Regulations.

JR did not respond with so much as a phone call to this demand. I do not accept that JR forgot to mail or fax the payroll records as required. JR had two clear opportunities to respond at least by phone to the Employment Standards officer. The notices are clear and unequivocal and JR chose not to respond to either of them. In my view, there is no reason to disturb the penalty imposed.

ORDER

I order pursuant to Section 115 of the Act, that Determination No. CDET 002593 be confirmed.

Barry Goff
Adjudicator
Employment Standards Tribunal

BJG:sc