

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 -

Amrit Investments Ltd.
("Amrit")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 96/456

DATE OF DECISION: October 9, 1996

DECISION

OVERVIEW

This is an appeal by Amrit Investments Ltd. (“Amrit”), under Section 112 of the *Employment Standards Act* (the “*Act*”), against Determination No. CDET 003277 which was issued by a delegate of the Director of Employment Standards on July 11, 1996. The Determination imposed a \$500.00 penalty on Amrit for failure to keep payroll records as required under Section 28 of the *Act*.

This decision deals solely with the question of whether or not Amrit has contravened Section 28 of the *Act*. It does not deal with the question of whether or not Christopher G. Thompson (“Thompson”) was employed by Amrit.

ISSUE TO BE DECIDED

Are there any grounds on which to cancel or vary the Determination?

FACTS

The Reason Schedule attached to the Determination states:

The employer did not keep payroll records as required by the Employment Standards Act (“the Act”) Part 3, Section 28(1) a through j and 28(2) a through c.

On June 18, 1996 Industrial Relations Officer, Beth Lyle, served Mrs. Badyl, the President of Amrit Investments Ltd, with a Demand for Employer Records of her employee Christopher G. Thompson.

Ms. Badyl did appear at Ms. Lyle’s office on June 27, 1996 at 10:00 a.m. as requested. The records she submitted were not in the form required by the Act and did not supply any information as to the hours worked by the Complainant.

The employer argued that the Complainant was leasing the premises but was unable to provide any lease agreement to substantiate her claim. Since no lease agreement exists and the employer had provided this employee with a T4 slip for work in 1995, little doubt exists that he was anything other than an employee.

Counsel for Amrit made the following statement as reasons for this appeal:

“Complainant (Thompson) was not an employee. He still has keys of the premises. He obtained an unaddressed T4 from the company bookkeeper by misrepresentation without approval of the appellant (Amrit). Complainant paid himself from cash collected by complainant from operation of his lease.”

This is the only submission made by Counsel for Amrit.

ANALYSIS

This appeal deals only with the \$500.00 penalty imposed by Determination No. CDET 003277.

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 in person on June 18, 1996 required the following employment records to be delivered to the Employment Standards Branch by June 27, 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.

At the time that the Determination was issued on July 11, 1996 Amrit had not provided the information which the Demand required it to provide on or before June 18, 1996.

Although Amrit argues in this appeal that Thompson was not an employee, it has not submitted any evidence to the Tribunal to support that argument. In fact, Amrit had not provided any evidence to the Tribunal. In particular, Amrit has not provided any evidence concerning the alleged lease agreement between it and Thompson.

Amrit's appeal does not give any explanation or reason for its failure to provide the information required by the Demand. In the absence of any reasons for Amrit'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 003277 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC:sr