

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 -

Merlin's Cabaret Ltd.
("Merlin's")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 96/468

DATE OF DECISION: October 3, 1996

DECISION

OVERVIEW

This is an appeal by Merlin's Cabaret Ltd. ("Merlin's"), under Section 112 of the *Employment Standards Act* (the "Act"), against Determination No. CDET 003431 which was issued by a delegate of the Director of Employment Standards on July 19, 1996. Merlin's argues that it should not be required to pay the \$500.00 penalty which the Determination imposed under Section 98 of the *Act* and Section 28 of the *Employment Standards Regulation*

ISSUE TO BE DECIDED

Should the Determination (\$500.00 penalty) be varied, cancelled or confirmed?

FACTS

The facts of this appeal are not really complicated, nor is there any serious dispute of the facts.

On June 18, 1996 a "Demand for Employer Records" was served on Merlin's by the Director's delegate requiring production of records by June 26, 1996. Merlin's did not comply with the Demand dated June 18, 1996 and the Director's delegate issued a Determination (CDET No. 003172) imposing a \$500.00 penalty on Merlin's. That Determination (CDET No. 003172) was not appealed by Merlin's

On July 10, 1996 another "Demand for Employer Records" was served on Merlin's by the Director's delegate, requiring production of records by July 18, 1996. Merlin's did not comply with the Demand dated July 10, 1996. On July 19, 1996 the Director's delegate issued Determination No. CDET 003431 which imposed another \$500.00 penalty on Merlin's. It is Determination No. CDET 003431 which is the subject of this appeal.

On July 19, 1996 a third "Demand for Employer Records" was served on Merlin's by a delegate of the Director, requiring production of records by July 29, 1996. Merlin's delivered the records to the Director's delegate on July 26, 1996 thereby complying with the Demand dated July 19, 1996.

ANALYSIS

Determination No. CDET 003431 (the second Determination to be issued against Merlin's for failure to produce records) required Merlin's to pay \$500.00 as a penalty for failing to provide records to the Director's delegate as required under a "Demand for Employer Records" dated July 10, 1996. The Demand required Merlin's to deliver employment records to the Director's delegate "... no later than 10:00 a.m. on July 18, 1996." The Demand included a clear warning that "Failure to comply ... may result in a \$500.00 penalty for **each** contravention..."(emphasis added).

In its appeal Merlin's argues that "... since all relevant documents have been supplied ... we request that the \$500.00 penalty be reversed."

It is true that Merlin's delivered the employment records on July 26, 1996. However, the Demand dated July 10, 1996 required the records to be delivered by July 18, 1996. Clearly, the records were not delivered by Merlin's on or before July 18, 1996.

Merlin's explanation for its failure to comply with the Demand dated July 10, 1996 is that employee records are not kept at the company's registered offices and that "... once the accounting offices learned of the situation, the matter was handled promptly as all records were supplied as requested."

I do not accept that argument. Sixteen days elapsed between the date the Demand was served (July 10, 1996) and the date on which Merlin's delivered the records (July 26, 1996). The Demand stated clearly that the records must be produced before July 18, 1996. Merlin's had had a \$500.00 penalty imposed on it in the recent past (CDET No. 003172) for exactly the same reason - failure to produce documents as required under a Demand for Employer Records.

For all these reasons I cannot find any ground on which to vary or cancel Determination No. CDET 003431

ORDER

I order, under Section 115 of the *Act*, that Determination No. CDET 003431 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal