

**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-

Repel Security Systems Ltd.  
(the "Appellant")

-of a Determination issued by-

The Director of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	E. Casey McCabe
<b>FILE No.:</b>	98/049
<b>DATE OF DECISION:</b>	July 8, 1998

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the Employment Standards Act (the "Act") by the employer, Repel Security Systems Ltd., of a Determination dated January 27, 1998 requiring the employer to pay a penalty of \$500.00 for failing to produce daily payroll records of the Respondent. The Director's delegate determined that the employer had contravened Section 46 of the Employment Standards Regulation and imposed the penalty under Section 28 of the Regulation.

### ISSUE TO BE DECIDED

Should the employer be relieved from the requirement to pay the \$500.00 penalty?

### FACTS

The employer operates a security company. On December 17, 1997 a Demand for Employer Records was issued by Mr. John Hartmann, Industrial Relations Officer. The demand was for the employment records of Mr. Sukdev S. Dhillon for the period of October 1, 1995 to October 31, 1997. Those records required to be disclosed, produced and delivered included:

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 Regulation*.

The employer was required to disclose, produce and deliver those records by 12:00 noon on Friday January 2, 1998.

On December 19, 1997 the employer, by fax transmission, requested an extension to Friday January 16, 1998 for the production of the documents. That extension was granted by a hand written notation on a return fax signed by Mr. Hartmann on December 19, 1997.

On January 16, 1998 the employer forwarded with a cover letter employment records for Mr. Dhillon, respondent. The employer advised that the employee held a supervisory position on a monthly salary that was paid on a semi-monthly basis. The employer also counter-claimed for an overpayment of overtime.

The employer submitted the monthly payroll records which did not include daily payroll records. However, also submitted were the daily records of the days on which overtime was worked. The overtime records were kept on a separate sheet. Mr. Hartmann concluded that the records were insufficient and the determination was issued requiring the employer to pay a \$500.00 penalty.

On appeal the employer states that it had produced all available records which included the monthly statement of earnings showing the amounts paid and the deductions made. The employer further argued that Mr. Dhillon was employed in a managerial capacity and was paid by fixed monthly salary. Thirdly, the employer argued that there was no provision or requirement for overtime pay. The employer further suggested that Mr. Hartmann had taken the file personally and was out to get the employer.

## ANALYSIS

Section 28 of the Act sets out the records that are required to be kept by an employer. That section states:

### **28. Payroll Records**

- (1) For each employee, an employer must keep records of the following information:
  - a) The employee's name, date of birth, occupation, telephone number and residential address;
  - b) The date employment began;
  - c) The employee's wage rate, *whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis;*
  - d) *The hours worked by the employee on each day, regardless of whether the employee is paid on an hourly or other basis;*
  - e) The benefits paid to the employee by the employer;
  - f) The employee's gross and net wages for each pay period;
  - g) Each deduction made from the employee's wages and the reason for it;
  - h) The dates of the statutory holidays taken by the employee and the amounts paid by the employer;
  - i) The dates of the annual vacation taken by the employee, the amounts paid by the employer and the days and amounts owing;
  - j) How much money the employee has taken from the employee's time bank, how much remains, the amounts paid and dates taken.
- (2) Payroll Records must:
  - a) Be in English,

- b) Be kept at the employer's principle place of business in British Columbia, and
- c) Be retained by the employer for 7 years after the employment terminates.

(italics by writer)

Section 79(3) of the Act sets out the remedies that the Director may impose for breaches of different sections of the Act. One remedy that is available to the Director is the imposition of a monetary penalty as set out in section 98 of the Act and Sections 28 and 29 of the Regulation. Section 28 of the Regulation reads:

**Penalty for contravening a record requirement** – 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.

If the decision to impose a penalty is made by the Director the assessment must be \$500.00. There is no element of discretion involved in assessing the penalty. The statute clearly sets the penalty at \$500.00.

The employer argues that it should not be assessed the penalty because Mr. Dhillon is a manager and therefore outside the Act. I take the thrust of the employer's argument being that since Mr. Dhillon is not an employee the employer is not required to keep daily records. The issue of the status of Mr. Dhillon, from a review of the file material, is not before me. There is no evidence to indicate that Mr. Dhillon is a manager. I cannot and will not decide that issue on this appeal. The issue on this appeal is whether the employer should be relieved of the penalty imposed for failure to keep daily payroll records. It is because such records may be relevant to a question of employee status that they must be kept.

The employer further argues that it should not be subject to a penalty because it has produced all records available. That may well be the case but the problem faced by the employer is that its record keeping process is flawed under the provisions of the statute. The Act is specific with regards to the records that are required to be kept. The employer has failed to keep those records and the Director has subsequently imposed a penalty for that breach. The issue before me is limited to the appeal of the penalty pursuant to Section 28 of the Regulations.

On appeal the employer has raised an allegation that the Director's Delegate had taken the file personally and was out to get the employer. Such a claim is an allegation of bad faith on behalf of the Director's delegate. The allegation appears to be based on a feeling by the employer that because the Employment Standards Branch had investigated it previously that the employer was being singled out. The allegations raised by the employer are serious. The Employment Standards Branch conducts its investigations pursuant to complaints made under the Act. There is no evidence before me to indicate that the

Director's delegate in this case was doing anything other than exercising responsibilities mandated by the Act. I find there is no substance to this allegation by the employer.

On the basis of the evidence before me I am unable to relieve the employer of the penalty imposed.

**ORDER**

The Determination dated January 27, 1998 is confirmed.

**E. Casey McCabe**  
**Adjudicator**  
**Employment Standards Tribunal**