

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 -

Jack Haywood
("Haywood")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 96/454

DATE OF DECISION: October 18, 1996

DECISION

OVERVIEW

This is an appeal by Jack Haywood (“Haywood”) under Section 112 of the *Employment Standards Act* (the “Act”), against Determination No. CDET 003145 which was issued by a delegate of the Director on July 12, 1996. Haywood argues he should not be required to pay the \$500.00 penalty which the Determination imposed on him 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

On June 19, 1996, the Director’s delegate issued, via certified mail, a “Demand For Employer Records” against Haywood, an owner-operator of Victoria Taxi (1987) Ltd., requiring production of records (trip sheets for drivers) by June 28, 1996. Haywood did not comply with the Demand and the Director’s delegate issued Determination No. CDET 003145 on July 12, 1996 which imposed a \$500.00 penalty on Haywood.

Haywood appealed the Determination on July 29, 1996. His reason for the appeal was “Never received first notification”.

Subsequently, the Director’s delegate produced the certified mail card which shows the “Demand for Employer Records” was received at Haywood’s address on June 24, 1996. In response, Haywood argues that the Demand was served on his 14 year old son and not on him as he was out of town. He states the Demand was “put into a pile and lost”. He further argues that his drivers are not employees.

ANALYSIS

The Determination that is the subject of this appeal deals only with a penalty imposed on Haywood. It does not deal with the issue of whether Haywood’s drivers are employees. Therefore, this appeal deals only with the penalty issue.

I am satisfied that the Demand was properly served in accordance with the requirements of the *Act*. The Demand was served and received at Haywood's address. Haywood received notification that he was to produce records by June 28, 1996. The Demand included a clear statement that failure to comply may result in a \$500.00 penalty. Haywood did not comply. There is no evidence he has ever produced any of the records requested by the Director's delegate.

Given the above, I cannot find any ground on which to vary or cancel the Determination.

ORDER

I order pursuant to Section 115 of the *Act* that Determination No. CDET 003145 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal