

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 -

Collectrite Services Kelowna Ltd.
("Collectrite" or the "employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Paul E. Love

FILE NO.: 2000/294

DATE OF DECISION: August 8, 2000

DECISION

OVERVIEW

This is an appeal by Collectrite Services Kelowna Ltd. (“Collectrite” or the “employer”) of a Determination, dated March 31, 2000. The Delegate imposed a penalty for a failure by the employer to produce records in response to a demand. I dismissed this matter as a frivolous appeal as the employer failed to provide any submission or evidence which questioned the findings of the Delegate with regard to the penalty imposed pursuant to s. 28(b) of the *Regulations*.

ISSUE TO BE DECIDED

Did the Delegate err in imposing a penalty?

FACTS

This matter proceeds by way of written submissions.

Ms. Jaquish was employed as collection agent with the employer, Collectrite Services Kelowna Ltd., a debt collector service. Ms. Jaquish filed a complaint that the employer failed to pay overtime, and failed to pay wages for two training days. She worked the training days prior to commencing employment. The Delegate made a demand for records with regard to Ms. Jaquish, and the employer neglected or refused to provide the records which showed a record of the daily hours of work. Further the employer did not provide pay statements showing a record of the hours worked, as required by s. 27(1) of the Act. The Delegate could not review the records because they were not produced.

The employer’s very brief appeal submission does not respond to the facts found in the Determination. The only grounds of appeal advanced are that the principal of the company requested a person other than the assigned Delegate investigate the matter, that he was told by the Delegate another person would be contacting him and that he received no contact from the person other than the assigned Delegate. This is apparently because the principal of the employer has an ongoing dispute with the Delegate.

The delegate issued a penalty in the amount of \$500.00 under s. 28(b) the *Employment Standards Regulation*.

This is not the first time the Delegate imposed a penalty with regard to this employer. A \$500.00 penalty was imposed in respect of another complainant, for a similar complaint with regard to the employer’s failure to produce records.

In the Determination the Delegate stated that no reasonable explanation was advanced by the employer for the failure to deliver records. The Delegate stated further that if a reasonable

explanation had been advanced the Delegate would have exercised his discretion, and would not have issued a penalty.

ANALYSIS

In this appeal before the Tribunal, the burden is on the employer to demonstrate an error such that I should vary or cancel the Determination. In reviewing the Determination, it appears that the Delegate did have grounds to issue a penalty. The employer contravened s. 28 of the *Act*, and the penalty provided in the Regulations for this contravention is \$500.00. The power to impose a penalty is a significant tool that is available to the Delegate to persuade an employer to cooperate in an investigation. An employer who fails to comply with the *Act* by producing documents in a timely manner frustrates one of the purposes of the *Act*, which is to resolve employment disputes in a timely, fair and efficient basis.

The employer has alleged that he did not wish to deal with the Director's Delegate assigned to the case. In my view a party cannot choose who will conduct the investigation, that is a matter solely for the Director. The employer has failed to allege any errors that are responsive to the issues in this case. The employer has not presented any evidence or argument challenging any of the findings concerning the non-production of records. In *Re Rein*, BCEST #D561/97, the adjudicator referred to a frivolous appeal as one where no justiciable issue was raised, or where the proponent has presented no rational argument. This case is a frivolous appeal and I have considered s. 114 of the *Act*, in my decision to dismiss the appeal.

ORDER

Pursuant to section 115 of the *Act*, I confirm the Determination of the Delegate made March 31, 2000.

Paul E. Love
Adjudicator
Employment Standards Tribunal