

An appeal

- by -

Dan Dennill and Marlene Dennill operating as
FibreMaster Restorations & Carpet
(“FibreMaster”)

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: David B. Stevenson

FILE No.: 2001/232

DATE OF DECISION: June 15, 2001

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Dan Dennill and Marlene Dennill operating as Fibremaster Restorations & Carpet (“Fibremaster”) of a Determination that was issued on March 12, 2001 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Fibremaster had contravened Section 46 of the *Employment Standards Regulations* (the “*Regulations*”) ordered Fibremaster to cease contravening and to comply with the *Act* and *Regulations* and, under Section 98 of the *Act* and Section 28(b) of the *Regulations*, issued a monetary penalty of \$500.00.

Fibremaster says the Determination should be cancelled and they should be given another chance to provide the documents or further investigation into the penalty should be ordered.

ISSUE

The issue in this appeal is whether Fibremaster has demonstrated any basis upon which the Tribunal might cancel the Determination, provide Fibremaster with another opportunity to produce the documents and/or refer the matter back for further investigation.

FACTS

On January 17, 2001, the Director notified Fibremaster that complaints had been filed by four former employees of Fibremaster. The employees were named and a summary of their complaints was provided. The claims were for unpaid wages. The letter also referred to previous correspondence relating to two of the former employees that had gone unanswered.

The letter enclosed a Demand for Employer Records pursuant to Section 85 of the *Act*, dated January 18, 2001. The Demand clearly set out what was required. The Demand was properly delivered to CRC. The documents demanded were relevant to the investigation. The Demand noted that production of the documents was required on January 31, 2001.

No records were provided that met the requirements of the *Act*.

ARGUMENT AND ANALYSIS

In its appeal, Fibremaster does not dispute its failure to comply with the Demand. Fibremaster says that the records for two of the individuals were not sent because those persons were not employees, but were sub-contractors. Some records on one of the four individuals was sent, but they say the failure to be more responsive was hindered by a number of personal factors,

including moving their house and office and illness in the family. Even if there was no failure to comply in respect of the two employees, and I do not need to decide that, there clearly was a failure to comply in respect of the one employee.

The Determination was issued on March 12, 2001. There is no indication that any effort was made by Fibremaster, even after the deadline for production passed, to provide the documents. Nor is there anything on the file indicating Fibremaster made any effort to provide an explanation to the Director for their failure to meet the deadline for production or offer alternative arrangements.

The documents demanded were relevant to an investigation of the complaints.

Section 46 of the *Regulations* reads:

46. *A person who is required under section 85(1)(f) of the Act to produce or deliver records to the director must produce or deliver the records as and when required.*

Section 28(b) of the *Regulations* states:

28. *The penalty for contravening any of the following provisions is \$500 for each contravention:*
- (2) *section 3, 13 or 46 of this regulation.*

There is nothing in the material indicating Fibremaster made any significant effort to comply with the Demand. There is no basis upon which I can conclude the Determination should be cancelled. The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated March 12, 2001 be confirmed in the amount of \$500.00.

David B. Stevenson
Adjudicator
Employment Standards Tribunal