

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.: 2001/233

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 Part 3 of the *Act* for the third time and had contravened Part 7 of the *Act* for the second time and, under Section 98 of the *Act* and Section 29(2)(b) and (c) of the *Employment Standards Regulations* (the “*Regulations*”), issued a monetary penalty of \$1200.00.

In its appeal, Fibremaster says:

A determination regarding Part 3 was imposed a penalty of \$750.00. Everybody that has worked for us as an employee or as a sub-contractor has been paid at least an amount equivalent to minimum wage, if not more. So we would like to know where they found information stating that people were not.

ISSUE

The issue in this appeal is whether Fibremaster has demonstrated any basis upon which the Tribunal might cancel or vary the Determination.

FACTS

On March 12, 2001, the Director issued a Determination that concluded Fibremaster had contravened Part 3, Section 18(2) and Part 7, Section 58(3) of the *Act* in respect of the employment of Daniel Marcotte (“Marcotte”), Glenda Andrews (“Andrews”) and Darryl Rosa (“Rosa”) and ordered Fibremaster to cease contravening and to comply with the *Act* and to pay an amount of \$1,545.01. An appeal of that Determination was dismissed.

The Determination also set out the following facts, none of which have been disputed in this appeal:

On, June 5, 2000, Ed Wall, a delegate of the Director, issued a Determination which found that **DAN DENNILL AND MARLENE DENNILL operating as FIBREMASTER RESTORATIONS & CARPET** had contravened Part 3, Section 16 of the *Act*. That Determination was not appealed.

On June 5, a Penalty Determination in the amount of zero dollars (\$0.00) was issued which found **DAN DENNILL AND MARLENE DENNILL operating**

as **FIBREMASTER RESTORATIONS & CARPET** to have contravened section 16, Minimum Wage in Part 3 of the Act. The zero dollar penalty is the first in a series of escalating penalties, pursuant to Part 11, section 98 of the Act.

On September 8, 2000, Larry Bellman, a delegate of the director, completed an investigation on behalf of further complainants and issued a Determination which found that **DAN DENNILL AND MARLENE DENNILL operating as FIBREMASTER RESTORATIONS & CARPET** had contravened Parts 3, 4 and 7, Sections 16, 17(1), 18(1)(2), 40(1)(2) and 58(3) of the Act and Section 15 of the Regulation. A zero dollar penalty was issued for contravention of Parts 4 and 7, of the Act. That Determination was appealed unsuccessfully by the employer. That was the **second time** the employer had contravened Part 3 of the Act and an escalating penalty was issued.

This is the **third time DAN DENNILL AND MARLENE DENNILL operating as FIBREMASTER RESTORATIONS & CARPET** has contravened a specified provision of Part 3 of the Act. Therefore, the penalty is **\$250.00** multiplied by the number of affected employees. A review of payroll records indicates, at the relevant time, 3 employees were affected by the contravention. Therefore, the total penalty imposed is **\$750.00**

On September 8, 2000, Larry Bellman, a delegate of the Director of Employment Standards completed and [sic] investigation on behalf of further complainants and issued a Determination which found that **DAN DENNILL A.ND MARLENE DENNILL operating as FIBREMASTER RESTORATIONS & CARPET** had contravened Part 7, Section 58(3) of the Act. That was the **first time** the employer had contravened Part 7, Section 58(3) of the Act and a zero dollar penalty was issued. The zero dollar penalty is the first in a series of escalating penalties pursuant to Part 11, Section 98 of the Act.

This is the **second time DAN DENNILL AND MARLENE DENNILL operating as FIBREMASTER RESTORATIONS & CARPET** has contravened Part 7 of the Act. Therefore, the penalty is **\$150.00** multiplied by the number of affected employees. A review of the payroll records indicates at the relevant time, 3 employees were affected by the contravention. Therefore, the total penalty imposed is **\$450.00**.

ARGUMENT AND ANALYSIS

The relevant provisions of Section 29 of the *Regulations* read:

29. (1) *In this section, “specified provision” means a provision or requirement listed in Appendix 2.*

(2) *The penalty for contravening a specified provision of a part of the Act or a part of this Regulation is the following amount:*

...

- (b) *\$150 multiplied by the number of employees affected by the contravention, if the person contravening the provision has contravened a specified provision of the Part on one previous occasion;*
- (c) *\$250 multiplied by the number of employees affected by the contravention, if the person contravening the provision has contravened a specified provision of the Part on 2 previous occasions;*

Part 3, Sections 16, 17(1) and 18(1) and (2) and Part 7, Section 58(3) of the *Act* are listed in Appendix 2.

There is nothing in the appeal that addresses either the factual or legal basis upon which this Determination is based.

The burden on Fibremaster in this appeal is to demonstrate an error in the Determination. They have failed to do so and 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 \$1,200.00.

David B. Stevenson
Adjudicator
Employment Standards Tribunal