

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 -

K.C.T. Construction & Trade Inc.
("KCT")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

FILE N_{O.}: 96/504

DATE OF **D**ECISION: N_OVEMBER 21, 1996

DECISION

OVERVIEW

This is an appeal, pursuant to Section 112 of the *Employment Standards Act* (the "Act"), by K.C.T. Construction & Trades Inc. ("KCT") of Determination Number CDET 003662, dated August 13, 1996. That Determination found KCT in violation of Section 46 of the *Act* (production of records) and assessed a penalty against KCT pursuant to Section 98 of the *Act* and Section 28 of the Regulations in the amount of \$500.00. KCT filed its appeal of the Determination on August 27, 1996. The reasons for Appeal were stated as follows:

I am keeping my payroll records as per employment standard Act [sic]. I was not informed of it before But [sic] now I keep all papers in order.

In a letter dated September 18, 1996 from the office of the Employment Standards Tribunal KCT was provided with a copy of all documents on the file of the Employment Standards Branch and advised if any written submission was contemplated it was to be filed on or before October 9, 1996. On that date KCT requested and was granted an extension for filing any submission to October 16, 1996. No submission was filed.

ISSUE TO BE DECIDED

The issue to be decided is whether the Director of the Employment Standards Branch was justified in the circumstances in assessing a penalty on KCT in the amount of \$500.00 for failure to produce employer records.

FACTS

The facts on file indicate the following sequence of events:

1. On March 20, 1996 a Demand for Employer Records was sent by facsimile to KCT. Receipt of the facsimile by KCT was established.
2. The Demand required KCT to produce its records for "all employees" by 4:00 pm, April 3, 1996. No records were produced on or before that date.
3. On April 24 and 25 a delegate of the Director attempted without success to contact KCT.

4. On May 9, 1996 the delegate received a facsimile from KCT attaching some information respecting one former employee of KCT, Fred Medeiros. This information was not in the form of a proper payroll record.
5. On May 15, 1996 the delegate met with a representative of KCT and produced some information which was both incomplete and not conforming to the requirements of the *Act*. The delegate advised the representative of KCT what was required of KCT to meet the statutory duty to maintain employer records. Section 28 of the *Act* was reviewed with the representative and the employer was asked to comply. An additional 10 days to produce records complying with the *Act* was granted.
6. No employment records have been produced.

ANALYSIS

The *Act* requires employers to maintain proper employer records. Section 28 of the *Act* identifies the information which must be kept. The legislation also requires persons having this information to make it available for inspection by a delegate of the Director upon demand. Compliance with this statutory obligation is an essential aspect of ensuring compliance with and facilitating enforcement of the *Act*.

When the amendments to the *Act* came into force in November, 1995 the legislature deemed it appropriate to provide the Director of the Employment Standards Branch with the power to impose a monetary penalty upon persons who failed or refused to produce records following a proper demand by the Director. Section 28 of the Regulations sets the amount of the fine at \$500.00 for each contravention.

The Demand for Employer Records by the delegate of the Director was a proper one. KCT failed or refused to comply with the Demand. No adequate explanation is given. KCT is in breach of Section 46 of the Regulations. The imposition of a penalty was appropriate in the circumstances. The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order Determination Number CDET 003662, dated August 13, 1996, confirmed

David Stevenson
Adjudicator
Employment Standards Tribunal