

**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 -

Robert White  
("White")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 97/359

**DATE OF DECISION:** July 28, 1997

## DECISION

### OVERVIEW

This is an appeal by Robert White (“White”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated April 14, 1997 which was issued by a delegate of the Director of Employment Standards (the “Director”). White alleges that the delegate of the Director erred in the Determination by concluding that White had contravened Section 46 of the *Employment Standards Regulation* (the “Regulation”) by failing to provide employer records as requested. White further alleges that as he was not an employer, he could not be compelled to provide employer records. The Director’s delegate concluded that White had contravened Section 46 of the *Regulation* and imposed a penalty of \$500.00 pursuant to Section 28 of the *Regulation*.

### ISSUES TO BE DECIDED

The issues to be decided in this appeal are:

1. Is White required to provide employer records as requested pursuant to Section 85 of the *Act* ?
2. If the answer to No. 1 is yes, is the penalty imposed appropriate in the circumstances ?

### FACTS

During the course of investigating a complaint filed by David Gaw (“Gaw”) with the Employment Standards Branch, the delegate of the Director issued on March 11, 1997 a ‘Demand for Employer Records’ to White. The records requested were required to be provided not later than 10:00 a.m. Wednesday, March 19, 1997. White failed to provide the records requested.

A Determination was issued on April 14, 1997 imposing a \$500.00 penalty on White for failing to provide the requested records.

White contends that *Victoria Taxi Ltd. et al* (1996) BC EST No. D364/96 has clearly established that “all lease operators are not employees under the *Act*”. White further contends that if the lease operators are not employees, he is therefore by extension not an employer and therefore not required to respond to the ‘Demand for Employer Records’.

**ANALYSIS**

Section 85 of the *Act* provides the basis for the issuance of a ‘Demand for Employer Records’ and states:

***“Entry and inspection power***

85. (1) *For the purposes of ensuring compliance with this Act and the regulations, the director may do one or more of the following:*

.....

(c) *inspect any records that may be relevant to an investigation under this Part:*

.....

(f) *require a **person** to produce, or to deliver to a place specified by the director, any records for inspection under paragraph (c) .....*” (emphasis added)

The language of Section 85 (1) (f) does not restrict the requirement to “*produce or deliver*” records to only an employer. The use of the word ‘person’ clearly means that anyone may be required to “*produce or deliver...any records*” . There are a great many occasions where a third party, such as an accounting firm, legal counsel or contract bookkeeper to name just a few, may have possession of an employers records but are clearly not the employer.

Furthermore, Section 46 of the *Regulation* provides:

***“Production of records***

*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.*” (emphasis added)

This provision also utilizes the word ‘person’, again clearly indicating that anyone, not only an employer, is subject to the terms of this provision.

I conclude therefore that White was required to provide the records as requested in the ‘Demand for Employer Records’ and his failure to do so was in fact a contravention of Section 46 of the *Regulation*.

With respect to issue No. 2, the appropriateness of the penalty imposed, Section 28 of the *Regulation* provides:

***“Penalty for contravening a record requirement***

*The penalty for contravening any of the following provisions is \$500.00 for each contravention:*  
*(a) section 25(2)(c), 27, 28, 29, 37(5) or 48(3) of the Act;*  
*(b) section 3, 13 or 46 of this regulation”*

Having already concluded that White contravened Section 46 of the *Regulation*, the appropriateness of the penalty is not in issue as the imposition of that penalty is required by the provisions of Section 28 of the *Regulation*.

For all of the above reasons, White’s appeal is dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated April 14, 1997 be confirmed in the amount of \$500.00.

**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**