

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 -

Western Campus Resources Inc. operating as Discount Text Books
("WCR")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 97/463

DATE OF DECISION: July 28, 1997

DECISION

OVERVIEW

This is an appeal by Western Campus Resources Inc. (“WCR”), under Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination dated May 23, 1997 which was issued by a delegate of the Director of Employment Standards (the “Director”). WCR alleges that the delegate of the Director erred in the Determination by concluding that WCR had contravened Section 46 of the *Employment Standards Regulation* (the “*Regulation*”) by failing to provide employer records as requested. The Director’s delegate concluded that WCR 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. Did WCR contravene Section 46 of the *Regulation* ?
2. Was the penalty imposed appropriate in the circumstances ?

FACTS

During the course of investigating a complaint filed by James Galloway with the Employment Standards Branch on January 20, 1997, the delegate of the Director requested by letter to WCR dated February 13, 1997 that they provide certain records within 18 days of the date of the letter. WCR was advised in this letter of the potential for a \$500.00 penalty for failure to provide records.

On or about February 19, 1997 WCR contacted the delegate of the Director to discuss the issues raised and the requirements of the *Act*.

On March 26, 1997, the delegate of the Director contacted WCR in regard to the whereabouts of the information requested and asked that it be provided not later than April 10, 1997.

On April 8, 1997 WCR sent a fax to the delegate of the Director expressing some concern with respect to the disclosure of information pertaining to the records requested. The delegate of the Director sent a fax to WCR addressing those concerns and again restated the requirement to provide the records requested and the potential for a \$500.00 penalty.

No records were provided by WCR in response to the above noted letters, telephone calls and faxes sent by the delegate of the Director.

On April 23, 1997, a 'Demand for Employer Records' was issued and sent by certified mail to WCR. The requested records were to be delivered or produced at later than 4:30 p.m. on May 8, 1997. No records were provided in response to the 'Demand for Employer Records' by 4:30 p.m. on May 8, 1997.

A Determination for failure to provide records and the imposition of a penalty in the amount of \$500.00 was issued on May 23, 1997 and sent to WCR by certified mail.

On May 29, 1997 the delegate of the Director received a telephone call from Galloway advising that the matter with WCR had now been resolved.

WCR allege that they attempted to contact the delegate of the Director on May 8, 1997 and in fact left a voice mail message to advise him that the issue with Galloway had been resolved. The delegate of the Director advises that the voice mail message was received on May 12, 1997 and upon receipt of this message, the delegate of the Director left a message for Galloway to confirm that the matter had been resolved. Galloway contacted the delegate of the Director on May 15, 1997 to advise that the matter was not resolved and to proceed with his complaint.

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)

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)

WCR does not take issue with the fact that they did not deliver records by 4:30 p.m. on May 8, 1997 as requested in the ‘Demand for Employer Records’.

The issues of whether the voice mail message from WCR alleging that the matter was resolved was received by the delegate of the Director on May 8 or May 12, 1997 or the subsequent resolution of the matter between Galloway and WRC does not in anyway relieve WCR of their obligations under Section 46 of the *Regulation* to provide the records as and when required.

WCR was clearly made aware by the delegate of the Director on several occasions of the potential for a \$500.00 penalty for failure to provide records.

I conclude therefore that WCR was required to provide the records as requested in the ‘Demand for Employer Records’ by 4:30 p.m. on May 8, 1997 and their 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 WCR 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, WCR’s appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated May 23, 1997 be confirmed in the amount of \$500.00.

Hans Suhr
Adjudicator

Employment Standards Tribunal