

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 -

Repel Security Systems Ltd.
("Repel")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 97/480

DATE OF DECISION: July 28, 1997

DECISION

OVERVIEW

This is an appeal by Repel Security Systems Ltd. (“Repel”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated May 29, 1997 which was issued by a delegate of the Director of Employment Standards (the “Director”). Repel alleges that the delegate of the Director erred in the Determination by concluding that Repel 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 Repel 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 Repel contravene Section 46 of the *Regulation* ?
2. Was the penalty imposed appropriate in the circumstances ?

FACTS

During the course of investigating a complaint filed with the Employment Standards Branch, the delegate of the Director issued on December 5, 1996 a ‘Demand for Employer Records’ to Repel. On December 12, 1996 a request for an extension was received and granted. The records requested were required to be provided not later than December 19, 1997. Repel failed to provide all of the records requested.

A Determination was issued on May 29, 1997 imposing a \$500.00 penalty on Repel for failing to provide all of the requested records.

Repel contends that they made many attempts to contact the delegate of the Director to discuss the issues but were told that the delegate was on vacation. On other occasions Repel contends that the delegate of the Director did not return telephone messages left for him. Repel further contends that after making contact with the delegate of the Director, they had a difficult time resolving the issues with him.

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)

Repel does not take issue with the fact that they did not deliver all records as requested in the ‘Demand for Employer Records’.

The concerns expressed by Repel with respect to their experience in dealing with the delegate of the Director does not in anyway relieve them of their obligations under Section 46 of the *Regulation*.

I conclude therefore that Repel was required to provide all of the records as requested in the ‘Demand for Employer Records’ 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 Repel 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, Repel’s appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated May 29, 1997 be confirmed in the amount of \$500.00.

Hans Suhr
Adjudicator
Employment Standards Tribunal

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