

**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 -

Glacier Valley Plumbing and Heating Ltd.

(“Glacier Valley or employer”)

- of a Determination issued by -

The Director Of Employment Standards  
(the “Director”)

**ADJUDICATOR:** Paul E. Love

**FILE NO.:** 99/328

**DATE OF DECISION:** August 27, 1999

## DECISION

### OVERVIEW

This is an appeal by Glacier Valley Plumbing & Heating Ltd. (“Glacier Valley”, or “employer”) of a Determination dated May 5, 1999. The principal issue to be determined is whether the Delegate erred in imposing a penalty of \$500.00 for the failure of Glacier Valley to supply employment records to the Delegate which were demanded by the Delegate.

### ISSUES TO BE DECIDED

Did the employer breach the Act by failing to supply records to the Director’s Delegate?

Did the Delegate err in imposing the penalty?

### FACTS

Glacier Valley carries on business in the Abbotsford area. A complaint was made against this employer by an employee or former employee. A Director’s delegate left messages with Mr. Marko Suuronen of the employer on February 19, 1999, March 30, 1999 and April 9, 1999 to contact the delegate. The delegate met with Mr. Suuronen on April 13, 1999. Mr. Suuronen promised to provide the records at a meeting set for the delegate’s office on April 16, 1999 at 11:00 am. He did not show up for the meeting. The Delegate prepared a Demand for Records, and served the demand by leaving it with an adult female who was present at the registered and records office of the employer. On April 27, 1999 the delegate left a message for Mr. Suuronen. As of the date of the Determination the Delegate had not heard from Mr. Suuronen.

In its appeal submission the employer confirms that he agreed to supply records, but indicates that he was not able to attend the meeting and he says that he attempted to reach the office telephone number to reschedule the meeting. The Delegate indicates that he has an answering machine and no message was left on the answering machine by the employer.

### ANALYSIS

#### **Issue 1: Did the employer breach the Act by failing to comply with a Demand for production of Records?**

In this appeal, the burden is on the employer or appellant to demonstrate an error such that I should vary or cancel the Determination. I am not satisfied that any error was made

in the findings of fact made by the Delegate. The employer failed to respond to the demand for records.

The employer argues that the amount of the penalty was severely unfair and out of proportion to the financial amounts in question. He indicates that the amount of wages due and owing to the employee was \$100.00 and that a fine of 500 % of the amount is unreasonable.

Section 85(1)(f) empowers the Director or his delegate to make a demand for production of records which are relevant to an investigation. The Delegate made a demand pursuant to section 85 of the *Act*, and served the demand. The demand provided for a reasonable time (5 days) for the delivery of the records. The demand was for all records relating to wages, hours of work and conditions of employment and all records an employer is required to keep pursuant to Part 3 of the *Act* and Part 8 section 46 and 47 of the *Regulation*. It is clear that the Director's delegate made the demand for a proper purpose, that is, to investigate a complaint

There was a clear failure to provide the records. The employer has provided no excuse for me to consider.

**Issue #2: Did the Director's delegate err in imposing a penalty of \$500.00?**

In this case the penalty was imposed pursuant to section 46 of the *Act*. The employer has a duty to comply with a demand made during the course of an investigation. Section 46 reads as follows:

A person who is required under s. 85(1)(f) of the *Act* to produce or deliver records must produce or deliver the records as and when required.

Failure to comply with such a demand has the effect of delaying and frustrating the investigation of a complaint.

The penalty for failing to comply with a demand is set out in s. 28 of the *Regulation*, and has been set at \$500.00 by the Lieutenant Governor in Council. This Tribunal will not review the discretion of the Delegate to impose a penalty because the employer alleges that the amount of the penalty is excessive. It is evident that the Delegate exercised his discretion to impose a penalty because the failure of an employer to produce records does frustrate and delay complaints, and it is necessary to deter this employer, and other employers from violating the *Act*.

Having decided to proceed with a Determination for failing to provide records, the Delegate has no discretion to reduce the amount of the penalty. This Tribunal has no jurisdiction to reduce the amount of the penalty, provided the penalty is one properly imposed. I have no hesitation in concluding that the penalty was properly imposed. I confirm the Determination made.

**ORDER**

I confirm the Determination made May 5, 1999, pursuant to Section 115 of the *Act*.

**Paul E. Love**  
**Adjudicator**  
**Employment Standards Tribunal**