

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act

-by-

Patrick Siu
Operating as A & C Sewing

(“Siu”)

-of a Determination issued by-

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 96/597

DATE OF DECISION: November 30th, 1996

DECISION

OVERVIEW

This is an appeal brought by Patrick Siu operating as A & C Sewing (“Siu”) pursuant to section 112 of the Employment Standards Act (the “Act”) from Determination No. CDET 004241 issued by the Director of Employment Standards (the “Director”) on October 9th, 1996. The Director issued a monetary penalty against an entity described as “A & C Sewing” for an alleged contravention of section 28 of the Act (failure to maintain payroll records). The penalty, in the amount of \$500, was assessed pursuant to section 98 of the Act and section 28 of the Regulations.

Siu has advanced several arguments in support of his appeal, none of which I find particularly relevant or compelling. Nevertheless, I am of the view that this Determination must be cancelled. My reasons follow.

FACTS AND ANALYSIS

Section 28 of the Act obliges all provincial employers who are subject to the Act to maintain certain payroll records. Section 98 of the Act provides that the Director may impose a monetary penalty if she is satisfied that a person has failed to comply with a requirement of the Act or Regulations. Finally, section 28 of the Regulations establishes a \$500 monetary penalty for failure to comply with section 28 of the Act (*i.e.*, the requirement to maintain payroll records).

According to the Reason Schedule accompanying the Determination, a Demand for Production of Payroll Records was issued on July 11th, 1996. This Demand was issued as part of an ongoing investigation of a complaint filed by Emilia Manguiat. The particular Demand issued in this case was directed to:

A&C sewing [sic]
1269 Clark Drive
Vancouver, B.C.
V5L 3K6

and requested that certain employment records pertaining to Emilia Manguiat be produced by “10 o’clock on July 19, 1996” (presumably 10:00 A.M.) at the Burnaby

office of the Employment Standards Branch. The Demand is dated “96-07-10” and was enclosed in a letter dated July 11th, 1996 addressed to “A&C Sewing Ltd.”; the salutation to this letter reads “Dear Mr. Patrick Sin”.

As noted above, the Determination names “A & C Sewing”. If this latter entity is an incorporated body, it is inaccurately described as the *Company Act* requires that all provincial corporations include one of “Limited”, “Incorporated” or “Corporation” (or the appropriate abbreviation or French equivalent) in the name (see s. 16, *Company Act*).

If “A & C Sewing” is merely a business name under which an individual operates a proprietorship, then, in my opinion, the proprietor must also be specifically named. In this case, the only named individual is Patrick Sin and he is only named in the salutation to the July 11th letter--this person is not named in the Demand or in the Determination itself. Further, it would appear that the person associated with “A & C Sewing” is not Patrick *Sin* but, rather, Patrick *Siu*.

As it stands, the Determination is a nullity.

An “employer” is obliged to maintain payroll records; in section 1 of the Act an “employer” is defined as a person. The Determination itself refers to the “above-named person” as the party who has contravened the Act. As a matter of law, a “person” may be a natural person or a corporate person (see s. 29, *Interpretation Act*) and either a natural or corporate person may be an employer. However, regardless of whether the employer is a natural or corporate person, this person must be specifically named in a Demand for Payroll Records or in a subsequent Determination.

It must be remembered that the monetary penalty provision of the Act is in the nature of a quasi-criminal sanction and as such, it is my view that the party named in a Demand for Records, or in any subsequent Determination (issued for failure to comply with the Demand), must be identified by their proper legal name. In my view, this latter requirement is no mere procedural “technicality”; if the Determination does not correctly name the proper party, any attempts to enforce the Determination are bound to prove futile.

In my opinion, the Determination in this case does not name either a natural or a legal person and accordingly, must be quashed as a nullity.

ORDER

Pursuant to section 115 of the *Act*, I order that Determination No. CDET 004241 be cancelled.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal