

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 -

CRC Enterprises Ltd. operating as Credit Recovery Centre
("CRC")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: David B. Stevenson

FILE No.: 2000/189

DATE OF DECISION: August 18, 2000

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by CRC Enterprises Ltd. operating as Credit Recovery Centre (“CRC”) of a Determination (the “Penalty Determination”) that was issued on February 24, 2000 by a delegate of the Director of Employment Standards (the “Director”). The Penalty Determination concluded that CRC had contravened Section 46 of the *Employment Standards Regulations* (the “*Regulations*”) and, under Section 98 of the *Act* and Section 28(b) of the *Regulations*, issued a monetary penalty of \$500.00.

CRC says the Penalty Determination is wrong and raises several reasons for that position:

- CRC maintains payroll records in accordance with Section 28 of the *Act*;
- the payroll records provided in response to the Demand for Employer Records included most of the information required to be kept under the *Act*;
- additional information was provided to the Director in a letter dated January 16, 2000.

ISSUES TO BE DECIDED

The issue in this case is whether CRC has shown the Penalty Determination was wrong.

FACTS

On December 7, 1999, Cathy Gromball, a former employee of CRC, filed a complaint in respect of her period of employment, claiming she had not been paid all wages earned while employed with CRC. CRC disputed the claim. The central issue in dispute was the number of hours worked by the complainant.

On January 10, 2000, the Director issued a Demand for Employer Records, pursuant to Section 85 of the *Act*. The Demand clearly set out what was required and prominently stated that failure to comply with the Demand could result in a \$500.00 penalty for each contravention. The Demand was properly delivered to CRC and receipt of the Demand by CRC was confirmed. As well, the Director sent a copy of the Demand to CRC by facsimile and receipt of that communication was confirmed.

CRC partially complied with the Demand, but failed to provide the Director with any record of the daily hours of work.

On February 24, 2000, the Director communicated by telephone with a representative of CRC and asked whether there were any further documents to be provided. The representative of CRC replied that there were none.

ANALYSIS

Section 46 of the *Regulations* reads:

46. *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.*

Section 28(b) of the *Regulations* states:

28. *The penalty for contravening any of the following provisions is \$500 for each contravention:*
- (2) section 3, 13 or 46 of this regulation.

CRC failed to comply with the Demand. The non-compliance related to information that was central to the complaint and was the key factual dispute between CRC and the complainant. The Determination notes the relevance of the missing information. Material contained in the file indicates this information was available, suggesting the material was deliberately withheld. The appeal submission also suggests CRC had that information as they maintained they had complied with the requirements of Section 28 of the *Act*. But even if that were not the case, the Determination also notes that CRC was made aware of the requirement to keep such records in the context of another Demand for Employer Records issued on September 29, 1997.

Finally, the Determination notes that the reason for issuing the penalty relates to one of the main purposes of the *Act*, found in Section 2(d), and to the need to provide a disincentive for failing or refusing to comply with a Demand and, as a result, frustrating or delaying investigation of a complaint.

For its part, CRC has not established any basis for its appeal. I agree with the submission of the Director that whether or not CRC generally complied with the requirements of Section 28 is not particularly relevant. The penalty was issued because CRC failed to comply with the Demand. In fact, if CRC had a daily record of hours for the complainant, their failure to produce them makes their conduct more egregious and the penalty more deserving. CRC also contends they should not be “penalized for participating in the process”. That contention completely misses the point. First, in the circumstances, CRC was statutorily required to provide the records. In that sense, they were not “participating in the process”, they were meeting a statutory obligation, see Section 46, *Regulations*. Second, CRC was not penalized for “participating” in the process, but for failing to do what it was required to do as part of the process, which was to deliver up the records encompassed by the Demand. To put it another way, CRC was penalized for **not** participating in the process.

None of the other arguments made by CRC has convinced me that there is any error in the Penalty Determination and the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Penalty Determination dated February 24, 2000 be confirmed.

David B. Stevenson
Adjudicator
Employment Standards Tribunal