

An appeal

- by -

Canadian Truck Mart Ltd.
("CTM")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: David B. Stevenson

FILE No.: 2002/287

DATE OF DECISION: August 12, 2002

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by Canadian Truck Mart Ltd. (“CTM”) of a penalty Determination that was issued on April 24, 2002 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that CTM had contravened Part 3, Section 28 of the Act and ordered CTM to cease contravening and to comply with the Act and, under Section 28(a) of the *Employment Standards Regulation* (the “Regulations”), imposed a fine of \$500.00.

CTM says the Determination should be cancelled because, when the “request for records was received we supplied immediately” and the fine was unfair.

ISSUE

The issue in this appeal is whether the penalty Determination should be cancelled.

FACTS

The Determination sets out the following facts and findings:

On May 10, 2001, Claire Rochefort issued a Demand for Records pursuant to section 85(1)(f) of the *Employment Standards Act* (the Act) to Canadian Truck Mart Ltd. A copy of the Demand and the proof of service are attached. The company refused delivery of the Demand. This Demand was necessary to investigate a complaint filed by James Evans for unpaid statutory holiday pay. The employer provided records to Ms. Rochefort on July 26, 2001, however the records were not complete.

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The records that were kept were incomplete. The employer had records of the commissions paid each pay period and how they were calculated. These were supplied to the delegate. However, the employer did not keep daily records of hours worked. The employer informed another delegate, Helene Beauchamp, that daily records were not kept and that it was the responsibility of the complainant, Evans, to keep the records.

None of the above facts have been disputed in this appeal.

ARGUMENT AND ANALYSIS

Section 28(1)(d) of the Act states:

28. For each employee, an employer must keep records of the following information:
- (d) the hours worked by the employee on each day, regardless of whether the employee is paid on an hourly or other basis;

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

28. *The penalty for contravening any of the following provisions is \$500 for each contravention:*
- (a) *section 25(2)(c), 27, 28, 37(5) or 48(3) of the Act;*

CTM did not keep a record of daily hours worked, as required by Section 28(1)(d) of the *Act*. In this appeal, CTM submits the records were delivered as soon as the request for records was made. As the Director notes in reply to the appeal, however, that statement is not accurate. The Demand included a requirement that the employer provide a record of hours of work for the complainant and no daily record of hours worked was ever provided. The Determination cites the failure to keep proper payroll records as the basis for the penalty. I am satisfied there was non-compliance with requirements of the *Act*.

I am also satisfied from the nature of the complaint and the material on file that the records sought were relevant to the complaint and that CTM's failure to keep proper records of hours worked interfered with the Director's ability to investigate and decide the complaint expeditiously.

CTM suggests that the rationale used by the Director to justify the imposition of a penalty was incorrect and unfair because the persons responsible for keeping the employee records were no longer with the company. Mr. Robertson, who filed the appeal on behalf of CTM, was an owner in CTM during the time the records should have been kept. The Director argues there has been no disposition of CTM, only a change in some of its management staff, and CTM should not be able to avoid liability for non-compliance with the requirements of Section 28 of the *Act* by changing its management. I agree. CTM had a statutory obligation to comply with the requirements of the *Act*. That obligation may not be avoided by suggesting the people hired and made responsible for ensuring compliance were not doing their jobs.

A penalty was appropriate in the circumstances and the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated April 24, 2002 be confirmed in the amount of \$500.00.

David B. Stevenson
Adjudicator
Employment Standards Tribunal