

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1996, C. 113

- by -

Earthenwear Enterprises Ltd.
(the “Employer”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Mark Thompson

FILE NO.: 97/432

DATE OF DECISION: August 5, 1997

DECISION

OVERVIEW

This is an appeal by Earthenwear Enterprises Ltd. (The “Employer”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) of a Determination issued by the Delegate of the Director of Employment Standards on May 13, 1997. The Determination found that the Employer had contravened Section 28 of the *Act* by failing to produce a Demand for Employer Records issued on April 28, 1997. The Determination imposed a penalty of \$500 on the Employer. The appeal was decided on the basis of written submissions.

ISSUE TO BE DECIDED

The issue to be decided is whether the Employer should be required to pay a penalty for failure to respond to a Demand for Employment Records.

FACTS

The Director’s Delegate issued a Demand for Employer Records to the Employer on April 28, 1997 by certified mail, addressed to the Employer at its business address, with an identical copy to the director of the Employer at a different address. The Demand for Employer Records concerned a complaint by one former employee, covering the period August 13, 1996 until her termination. The Employer acknowledged that it did not reply to either letter. Ms. Padra Ahmadi (“Ahmadi”), a director of the Employer, stated in her appeal that she received a notice of an attempt to deliver one copy, but could not respond because the postal station kept the same hours as she did at the Employer’s store. She asserted that she had not received a notice of the second letter.

The basis of the Employer’s appeal was that Ahmadi had not been able to respond to the Demand for Employer Records and that the records in question did not exist and thus could not have been presented.

ANALYSIS

Section 28 of the *Act* requires an Employer to keep certain employment records. The specific items of information required include hours worked by an employee each day, wages paid, statutory holidays taken and annual vacation taken by the employee. The *Act* requires that these records be retained by the employer for seven years after employment terminates, the same period required by Revenue Canada for tax purposes. Section 85 of

the *Act* gives the Director the authority to require an employer to produce records relevant to the investigation of a complaint. In this case, the records in question were not extensive, and the Employer was warned that failure to produce them would result in a penalty. Section 122(1) of the *Act* states that a demand is deemed to have been served if

- (a) served on the person, or
- (b) sent by registered mail to the person's last known address.

In this case, the Director's Delegate in effect sent the demand to two addresses of the Employer. The law recognizes that persons involved with the administration of the *Act* should reply to registered letters. In this case, Ahmadi acknowledged that she did not respond to the notification from Canada Post. The Employer was required to keep the records in question, which covered a relatively brief period of employment prior to the Demand for Employer Records. Neither argument for canceling the Determination is persuasive. However, based on the evidence on the file, it appears that the Demand for Employer Records was the first contact that the Director's Delegate had with this Employer. In other cases, an employer has been notified of the amount at issue in a complaint and offered the opportunity to produce the appropriate records or pay the amount in question. See *South China Foods Enterprises Ltd.* BC EST #D286/97. While that procedure may not be feasible in all cases, it does offer a greater possibility for an employer to respond and participate in a settlement of the complaint, as anticipated by Sections 77 and 78 of the *Act*, than the process employed in this case.

ORDER

For these reasons, the Determination dated May 13, 1997 is confirmed, pursuant to Section 115 of the *Act*.

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Mark Thompson
Adjudicator
Employment Standards Tribunal