

An appeal

- by -

Artco Construction (1984) Ltd.
(the "Appellant")

- 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: Ib S. Petersen

FILE No.: 2002/290

DATE OF HEARING: August 9, 2002

DATE OF DECISION: August 20, 2002

DECISION

APPEARANCES:

Mr. Art van Klei	on behalf of the Appellant
No one	on behalf of the Director

FACTS AND ANALYSIS

This is an appeal, pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), of a Determination of the Director of Employment Standards (the “*Director*”) issued on May 2, 2002 which imposed a \$500.00 penalty. The Determination concluded that the Employer had contravened 46 of the *Employment Standards Regulation* by failing to produce certain records.

In *Narang Farms and Processors Ltd.*, BCEST #D482/98, the penalty process is summarized as follows:

“... the penalty determinations involve a three-step process. First, the Director must be satisfied that a person has contravened the *Act* or the *Regulation*. Second, if that is the case, it is then necessary for the Director to exercise her discretion to determine whether a penalty is appropriate in the circumstances. Third, if the Director is of that view, the penalty must be determined in accordance with the *Regulation*.”

The material facts are that a Demand for Employer records was issued. According to the Demand the records were to have been produced by January 31, 2002. Such records as were in the Appellant’s possession were, in fact, produced on February 8, 2002--a few days late. However, it is clear from the correspondence that there was a conversation between the Delegate on January 30, 2002 and that the records were, in fact, produced as per that conversation. A number of Delegates were involved in this investigation, which seems to have “gone off the rails” early on in the process, but the Delegate, to whom the file was ultimately transferred, makes no submission on the penalty. In the circumstances of this case, I am not convinced that a penalty is warranted. I am of the view that the Delegate erred and that the penalty must be set aside.

ORDER

Pursuant to Section 115 of the Act, I order that the Determination in this matter, dated May 2, 2002 be cancelled.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal