

BC EST # D376/98

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 -

Britannia Food Equipments Ltd
("Britannia")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Paul E. Love

FILE NO.: 98/410

DATE OF DECISION: September 3, 1998

DECISION

OVERVIEW

This is an appeal by Britannia of a Director's Determination imposing a penalty of \$500.00 for failure to keep and supply records concerning two "casual" employees. The employer claimed that it did not keep records because the employees abandoned their position, and that the employees were casual employees. The Director's delegate gave a clear and unambiguous set of reasons for the imposition of the penalty, which was fixed by the Regulations at \$500.00.

ISSUES TO BE DECIDED

Did the Director's delegate decide correctly that Britannia should pay a penalty of \$500.00?

FACTS

During an investigation conducted by a Director's delegate, the delegate issued a demand for records pursuant to section 85(1)(f) of the Act concerning the legal name of the employer, the start and termination date, hours worked, rates of pay, records of the daily hours, records of amounts paid for two employees of Britannia. The demand was served by mail and service was proven by way of an acknowledgement of receipt card.

The Demand set out that failure to comply with the demand might result in a penalty. The penalty sections and the amount of the penalty were set out in the demand.

The Director's delegate was unable to review the records which related to the hours worked by two complainants, Hai T. Nguyen and Konstantine V. Tcherenkov. Both the complainants alleged that they had worked 2 days for the

employer. The Director's delegate relied on the evidence of the employees. The employer paid the amounts required to be paid by the Director's delegate.

In a meeting with the Director's delegate the employer admitted that it did not keep records of the days and hours worked by two employees because they were "casual labourers", and that each of the employees had abandoned their position.

The Director's delegate, a different person from the person who investigated the complaints, imposed a \$500 penalty indicating as follows:

Section 2(d) of the *Act* states that one of the purposes is to provide fair and efficient procedures for resolving disputes that arise as a result of the requirements of the *Act*. The *Act* requires an employer to keep and deliver records when a request for production is made. Failure to deliver a record, at the very least, delays investigation. It may deny an employee a minimum employment standard . . .

The reason that you gave as to why the records were not kept is not acceptable. If there are no disincentives against employers who fail to participate in an investigation then such conduct may be repeated. The Director may issue penalties in order to create a disincentive against employers who frustrate investigations through failure to provide records. In this case, the Director has exercised her discretion and has issued a penalty.

The Director's delegate issued a penalty of \$500, pursuant to section 28(b) of the *Regulation*, for the employer's contravention of section 46 of the *Regulations*.

The submission of the employer confirms that it did not keep records for casual employees. The employer also argued that the employees were overpaid, that the employees abandoned their position, and that the employees damaged the property of the employer during their brief course of employment. The employer further submitted that the employees worked more than 6 months before the investigation.

ANALYSIS

The *Act* does not distinguish between the record keeping requirements for employees based on the length of their service. The records which an employer is required to keep for an employee are set out in section 28 of the *Act*.

It is clear that the employer did not keep records in this case for the two employees. The employer claims that it did not keep the records because the employees abandoned their position. This is not a defence, nor is it defensible to withhold or fail to pay employees, as this employer did.

The Director's delegate, clearly had the authority, pursuant to section 46 of the *Regulation* and section 85 of the *Act*, to demand production of the records sought. The employer clearly violated section 28 of the *Act*, and also section 46 of the *Regulations*.

The employer has not advanced any cogent argument as to why the Director's delegate erred in the imposition of the penalty. I am unable to assess the argument made concerning the timing of the investigation as the employer has not provided me with any factual basis to evaluate this argument. The only information before me indicates that the Director's delegate proceeded in a timely fashion in the investigation of this case, and imposition of the penalty.

In my view, the Director did exercise her discretion with regard to the facts of the case. The reasons for imposing the penalty are clear and unambiguous. The amount of the penalty is specified as \$500.00 in section 28 of the *Regulations*. I therefore uphold the penalty.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated June 5, 1998 be confirmed.

Paul E. Love
Adjudicator
Employment Standards Tribunal