

BCEST #D378/98

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 -

B.L.T. Productions Ltd.
("B.L.T." or the "Employer")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE NO.: 98/356

DECISION DATE: September 1, 1998

APPEARANCES/SUBMISSIONS

Ms. Tanya K. Taylor on behalf of the Employer

Ms. Sharon Cott on behalf of the Director

OVERVIEW

This is an appeal by the Employer pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination of the Director of Employment Standards (the “Director”) issued on May 28, 1998 which imposed a penalty of \$5,000.00 on the Employer for failing to apply for a child employment permit in accordance with the prescribed Conditions for Employment of Children in the Film, Television Industry. The Employer asks that the penalty be set aside.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether the Determination should be varied, confirmed or cancelled.

FACTS

The material facts are not in dispute:

“B.L.T. employed a child ... to work on Saturday, May 2, 1998. As the work was performed on Saturday, May 2, 1998, the permit application was required to be submitted by fax to the Employment Standards Branch no later than 24 hours from the first working day (no later than May 3, 1998). The permit application was neither received on May 3, 1998, nor on May 4, 1998 (the next working day of the Employment Standards Branch). Therefore, this permission will not be approved. The permit application was received on May 6, 1998.

On March 24, 1998, a formal warning letter from a delegate of the Director (attachment 1) was faxed and mailed to B.L.T. This letter advised that further contraventions of failure to make permit applications in a timely manner will result in penalties.”

The Employer acknowledges that it did not apply in a timely fashion. The delay was a mistake due to the recording taking place on a weekend, which is unusual, and the “paperwork was left behind at the studio.” The Employer further states that this was not intentional.

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ANALYSIS

It is useful to start the analysis with Section 9 of the *Act* which provides:

9.(1) A person must not employ a child under age 15 without the director's permission.

(2) A parent or guardian must not consent to a person employing a child under age 15 unless the person has obtained the director's permission.

(3) On permitting the employment of a child under age 15, the director may set the conditions of employment for the child.

(4) An employer must comply with the conditions of employment set under subsection (3).

It is clear that a person must not employ a child under age 15 unless the person has obtained the Director's permission. The Director has the authority to grant permission to employ a child under age 15 and set conditions for such employment. The Conditions for Employment of Children in the Film, Television and Television and Radio Commercial Industry set out those conditions and include such matters as health and safety of the child, the role of parent and guardian, hours of work, education and protection of income. Due to special circumstances in the film, television and commercial industry, the Director has established a special administrative process whereby applications for permits must be submitted to the Director within 24 hours of the commencement of the child.

In my view, the Director's authority to issue a penalty under Section 79(3) of the *Act* is discretionary. Section 98 of the *Act* provides the Director's delegate with the discretion to impose a penalty in accordance with the prescribed schedule. Section 29(4) of the *Employment Standards Regulation* (the "*Regulation*") establishes a penalty of \$5,000.00 for contravention of the special provision respecting Section 9(4) of the *Act* if the contravention relates to the employment of a child under 15 years of age in the movie picture, television, or television or radio advertising industry (B.C. Reg. 342/97). There is nothing in Section 29(4) of the *Regulation* which limits the authority of the Director's delegate to impose penalties only where contraventions are made knowingly.

Moreover, Section 81(1)(a) of the *Act* requires the Director to give reasons for the Determination to any person named in it (*Randy Chamberlin*, BCEST #D374/97). Given that the power to impose a penalty is discretionary and is not to be exercised for every contravention, the Determination must

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contain reasons which explain why the Director, or her delegate, has elected to exercise that power in the circumstances. It is not adequate to simply state that the person has contravened a specific provision of the *Act* or *Regulation*. In this case, however, the Determination explain why the Director's delegate elected to exercise her power to issue a penalty. In particular, the Determination points to a written warning to the Employer, dated March 24, 1998. This letter, which was faxed and mailed to the Employer states, with reference to four earlier applications for child employment permits:

“You are found to be in contravention of the *Employment Standards Act*, Section 9. The Conditions for Employment of Children in the Film, Radio and Commercial Industry require permits are to be applied for no later than twenty-four (24) hours after work commences. The work applied for was performed on March 3, 5 and 11, 1998. These applications were received on March 17, 1998 ... and will not be approved. The potential penalty for these contraventions would normally be \$20,000.00 (\$5,000.00 per contravention X 4 = \$20,000.00). However, since these are the first contraentions that have been noted, this letter serves a formal warning that further contraventions will result in penalties.”

The Director’s submission further notes that an officer of the Branch met with the Employer on March 23, 1998 “to review the Conditions prescribed by the Director and the procedure for applying for permission to employ children.” The officer, at that time, made it clear to B.L.T. that failure to submit permit applications on a timely basis is viewed as a serious matter.

The Employer does not dispute this. In short, I am not persuaded that the Determination should be set aside.

ORDER

Pursuant to Section 115 of the Act, I order that the Determinations in this matter, dated May 28, 1998 be confirmed.

Ib Skov Petersen
Adjudicator
Employment Standards Tribunal