

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 -

Toor Security Service Ltd.
("Toor")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 98/492

DATE OF DECISION: September 17, 1998

DECISION

OVERVIEW

This is an appeal by Toor Security Service Ltd. (“Toor”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) of a Determination issued by a delegate of the Director of Employment Standards (the “Director’s delegate”) on July 7, 1998. The Director’s delegate determined that Toor failed to comply with a demand for employer records and, accordingly, imposed a penalty in the amount of \$500.00.

ISSUE TO BE DECIDED

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

FACTS

Following receipt of a complaint from Kanwaljit Singh Thind (“Thind”) that he was owed wages by Toor, the Director’s delegate issued a Demand for Employer Records to Toor pursuant to Section 85(1)(f) of the *Act*. The Demand indicated that records were to be produced and delivered by “3:00 o’clock on June 24, 1998”. The Demand was served by certified mail and it was received by Toor on June 15, 1998.

The Demand set out that failure to comply with it might result in a penalty of \$500.00.

No records were provided to the Director’s delegate. Consequently, a Determination imposing a penalty was issued against Toor. At page 2 of the Determination, the Director’s delegate said:

The Demand for Records requested that the records requested be presented by 3:00 p.m. on June 24, 1998. On June 25, 1998, Dave Bansal called M. Elaine Bellamore and said that the company’s accountant was on holidays and that more time was needed to produce the information required. Ms. Bellamore told Mr. Bansal that, as he had called after the date the records were required by the Demand for Records, and, as he had claimed that his accountant was on vacation the previous time records were requested on another file on which records were not produced when a Demand for Records was issued, he would be granted no further time to produce records and that a Penalty Determination would be requested. Ms. Bellamore instructed Mr. Bansal to produce the records, however, as of the date of this Determination, no records have been produced by the employer.

The records demanded were relevant to an investigation, the employer was aware of the demand for production of records and the records were not delivered. 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 employer 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 \$500.00 pursuant to Section 28(b) of the *Employment Standards Regulation* (the "*Regulation*") for Toor's contravention of Section 46 of the *Regulation*.

In its appeal, the complete submission of Toor is as follows:

The demand for the records that were requested was not provided because our company's accountant was away on vacation.

However at this time we can provide you with the information regarding ... Thind.

Thank you.

Toor enclosed a document entitled Employee Detail with its appeal which indicates 3 payments were made to Thind in November, 1997 and December, 1997.

ANALYSIS

Section 46 of the *Regulation* provides that once a demand for employer records has been issued under Section 85 (1)(f) of the *Act*, the person to whom the demand is directed "must produce or deliver the records as and when required". If the records are not produced as demanded, Section 28 of the *Regulation* provides for a penalty of \$500.00.

In this case, a proper demand for employment records was issued to, and received, by the employer. The Demand clearly indicated what records were to be produced, where and when the records were to be produced, and the monetary penalty should the records not be produced as demanded.

It is clear that Toor did not provide records as and when requested by the Director's delegate. Toor received the Demand well in excess of the deadline to produce the records. It does not dispute that it failed to contact the Director's delegate until after the expiration of the deadline set out in the Demand. In its appeal Toor claims that it did not provide

records because its bookkeeper was on vacation. This, however, does not explain why it failed to contact the Director's delegate prior to the expiration of the deadline set out in the Demand. Further, Toor has never provided any records concerning Thind to the Director's delegate. In my view, Toor has not offered an adequate explanation for its failure to deliver records as requested by the Director's delegate. Toor now wants to provide "information" concerning Thind. The Tribunal has held in a number of decisions that it will not consider new evidence that could have been tendered by the appellant at the investigation stage (see for example *Kaiser Stables Ltd.* BCEST #D058/97; *Tri-West Tractor Ltd.* BCEST #D268/96). There is no reason for me to depart from these decisions.

Toor has not advanced any cogent argument as to why the Director's delegate erred in the imposition of the penalty. Considering all the circumstances, there is no reason to set aside the penalty imposed on Toor.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated July 7, 1998 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal

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