

**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.:** 98/493

**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 complaints from Sucha Singh Shergill (“Shergill”) and Lakwinder Singh Cheema (“Cheema”) that they were 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 March 27, 1998”. The Demand was served by certified mail and it was received by Toor on March 18, 1998.

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

On March 30, 1998 , Dave Bansal (“Bansal”), Operations Manager of Toor, sent a fax to the Director’s delegate requesting that he be given until April 30, 1998 to provide the records. On March 31, 1998, the Director’s delegate granted Bansal an extension to April 15, 1998.

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:

*As of the date of this Determination, no information has been provided by Toor Security Service Ltd. 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:

*Our companys bookkeeper was on a leave of absence due to his daughters wedding, thats why we could not provide any payroll records between March 30, 98 to April 15, 98.*

*However at this time we can provide you with the information as requested regarding ... Cheema and ... Shergill.*

*Thank you.*

## **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. The Director's delegate granted Toor a time extension for the production of records.

It is clear that Toor did not provide records as requested by the Director's delegate. It claims it did not do so because its bookkeeper was unavailable between March 30, 1998 to April 15, 1998. This, however, fails to explain why the records were not produced between March 18, 1998 (the date of receipt of the Demand) and March 30, 1998. Moreover, there is no explanation why records were not delivered to the Director's delegate after April 15, 1998. Indeed, there is no evidence that Toor made any contact with the Director's delegate after receiving the extension to produce records. Toor has not offered an adequate explanation for its failure to produce records as requested by the Director's delegate. Toor now wants to provide "information" concerning Cheema and Shergill. 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.

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**Norma Edelman**  
**Registrar**  
**Employment Standards Tribunal**

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