

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 -

Epicurean Steakhouse Ltd.
("Epicurean")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 97/651

DATE OF DECISION: September 17, 1997

DECISION

OVERVIEW

This is an appeal by Epicurean Steakhouse Ltd. (“Epicurean”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated July 29, 1997 issued by a delegate of the Director of Employment Standards (the “Director”). Epicurean alleges that the failure to comply with a Demand for Employer Records was an oversight caused in part by a language barrier. The delegate of the Director determined that Epicurean had contravened Section 28 of the Act and subsequently issued the Determination in the amount of \$500.00.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether the delegate of the Director erred in the Determination.

FACTS

Epicurean was notified by letter dated February 19, 1997 that a complaint had been received from a former employee alleging the wages for minimum daily pay were owing.

The delegate of the Director issued a “Demand for Employer Records” on April 8, 1997 requiring that records be produced by 4 p.m. April 25, 1997.

This demand was received by Epicurean on April 16, 1997. No records were produced.

The delegate of the Director issued a Determination dated July 29, 1997 in the amount of \$500.00 for the contravention of Section 28 of the *Act*.

Epicurean states that the Demand for Employer Records was received by the spouse of the owner, who, it is alleged has a very poor understanding of the English language and did not recognize the importance of the document.

ANALYSIS

Section 28 of the *Act* is the provision which sets forth the requirement of Epicurean to keep employee records. Section 85 of the *Act* is the provision which sets forth the authority of the Director to enter workplaces and inspect records and Section 85 (1) (f) provides:

Section 85, Entry and inspection powers

(1) *For the purposes of ensuring compliance with this Act and the regulations, the director may do one or more of the following:*

(f) require a person to produce, or to deliver to a place specified by the director, any records for inspection under paragraph (c).

Section 46 of the *Employment Standards Regulation* (the "*Regulation*") requires the production of the records requested pursuant to Section 85 (1) (f) of the *Act*. Section 46 of the *Regulation* provides:

Section 46, Production of records

A person who is required under section 85 (1) (f) of the Act to produce or deliver records to the director must produce or deliver the records as and when required.

Section 28 of the *Regulation* sets forth the consequences of contravening a record requirement and provides:

Section 28, Penalty for contravening a record requirement

The penalty for contravening any of the following provisions is \$500 for each contravention:

- (a) *section 25 (2) (c), 27, 28 29, 37 (5) or 48 (3) of the Act;*
- (b) *section 3, 13 or 46 of this regulation.*

Epicurean does not dispute that the Demand for Employer Records was not complied with.

Epicurean was aware, pursuant to the notification letter of February 19, 1997, that a complaint had been filed and should have made arrangements for any correspondence with respect to the complaint be forwarded to be dealt with by a representative in the absence of Kathy Liotasatkis.

I conclude that the delegate of the Director did not err in the Determination dated July 29, 1997.

For all of the above reasons, the appeal by Epicurean is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated July 29, 1997 be confirmed in the amount of \$500.00.

Hans Suhr
Adjudicator
Employment Standards Tribunal