

An appeal

- by -

Swiftsure Taxi Co Ltd  
(“Swiftsure”)

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

**ADJUDICATOR:** James Wolfgang

**FILE No.:** 2001/371

**DATE OF HEARING:** August 21, 2001

**DATE OF DECISION:** September 10, 2001

## DECISION

### APPEARANCES:

P. Wahlla	Swiftsure Taxi
A. Kang	Swiftsure Taxi
Myron Wallace	Director of Employment Standards

### OVERVIEW

This is an appeal by Swiftsure Taxi Co. Ltd. (“Swiftsure” or the “Employer”) pursuant to Section 112 of the *Employment Standards Act (the “Act”)* of a Determination issued by the Director of Employment Standards (the “Director”) dated May 02, 2001. The Determination found Swiftsure had contravened Parts 3, 5 and 7 of the *Act* and were penalized \$450.00.

A Determination dated October 19, 2000 found Swiftsure in contravention of violations of Sections 18(1), 40(1), 46(1 & 2) and 58(3) of the *Act*. The attached Penalty Determination also dated October 19, 2000 assessed Swiftsure a penalty of \$0.00.

Swiftsure did not appeal either Determination.

### ISSUE

Was the Director correct in imposing a \$450.00 penalty on Swiftsure?

### THE FACTS AND ARGUMENT

The determination found this was the second time Swiftsure had violated Parts 3, 5 and 7 of the *Act*.

The zero dollar penalty issued on October 19, 2000 was in regard to an outstanding wage claim by Mr. W. S. Nelson.

Swiftsure claim they took over a mess in July 2000. All the employees were behind in their pay and the office manager quit in the middle of the change over. Many important documents could not be found and were either destroyed or stolen. Swiftsure claim they never appealed the Determinations issued on October 19, 2000 as they agreed they owed Mr. Nelson the money in the Determination. They state they co-operated fully with the Director. Swiftsure noted they received a letter from one of the delegates of the Director thanking them for paying Mr. Nelson.

Swiftsure submitted a letter from Mr. Nelson, which stated he had been paid in full and felt he had been dealt with in good faith. Swiftsure contends the violations were actions of the previous management and they have made every effort to correct the problems since taking over in July 2000.

The delegate agrees there has been some effort to correct the problems that existed however the violations were not corrected until after the Determination was filed in the Supreme Court.

The Director notes there have now been five complaints filed against Swiftsure for violations of Parts 3,5 and 7 of the *Act* and felt a penalty was needed to prevent any further violations.

### **ANALYSIS**

The number of violations against Swiftsure and their reluctance to meet the obligations of the *Act* suggests some penalty is appropriate.

The delegate has indicated it required filing the Determination in the Supreme Court of British Columbia before the payments were made. The new owners assumed control of the business in July 2000 and have had a reasonable time to correct the problems inherited from the previous owners. With five complaints for violations of the same Sections of the *Act* a single penalty of \$450.00 does not seem excessive. It is obvious the zero penalties were not taken seriously and the purpose of penalties is to encourage employers to comply with the provisions of the *Act*.

The Penalty section contained in the Determinations clearly indicates:

.....however, escalating monetary penalties will be imposed if there is any future contraventions.....

There is an obligation on the appellant to prove the Determination is in error and Swiftsure has failed in that regard.

### **ORDER**

In accordance with Section 115 of the *Act* I confirm the Determination by the Director dated May 02, 2001.

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**James Wolfgang**  
**Adjudicator**  
**Employment Standards Tribunal**