

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 -

M.R. Smith Limited
("Smith")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 97/688

DATE OF DECISION: November 7, 1997

DECISION

OVERVIEW

This is an appeal by M.R. Smith Limited (“Smith”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated August 28, 1997 issued by a delegate of the Director of Employment Standards (the “Director”). Smith alleges that the delegate of the Director erred in the Determination by concluding that Smith had contravened Section 46 of the *Employment Standards Regulation* (the “Regulation”) by failing to provide records when required.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether the penalty issued to Smith by the Director is appropriate ?

FACTS

The Director issued a “Demand for Employer Records” to Smith on March 12, 1997 requiring payroll records be produced. Smith did not produce any records in response to this demand.

The Director issued a penalty Determination for the failure by Smith to produce records as required. Smith has appealed this penalty Determination.

The Director issued a second “Demand for Employer Records” to Smith on June 19, 1997 again requiring payroll records be produced. Smith contacted the Director as a result of this second demand and subsequently agreed to complete a self-audit for overtime compliance by August 1, 1997. The Director confirmed the agreement by letter dated June 27, 1997 and advised Smith at that time that if the self-audit had not been completed by August 1, 1997, the penalty provisions detailed in the “Demand for Employer Records” would be applied. Smith did not submit complete payroll records as required.

The Director issued a penalty Determination in the amount of \$500.00 for a contravention of Section 46 of the *Regulation*. This appeal is in respect to the second penalty Determination.

Smith alleges that they attempted to contact the delegate of Director on August 1, 1997 to advise that they had not been able to locate all the records requested however they were advised that the delegate of the Director was on vacation until August 12.. Smith alleges that they were not able to make contact with the delegate of the Director until August 18, 1997 and then provided those records which were available on August 22, 1997.

ANALYSIS

The authority of the Director to inspect and require the production of records is found in Section 85 (1) (f) which states:

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).

The requirement to provide records as requested is found in Section 46 of the *Regulation* which states:

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.

Smith has not provided any evidence that they completed the self-audit by August 1, 1997, a condition to which they had agreed to. Smith was well aware that the failure to complete the self-audit as agreed would result in the penalty provisions of the "Demand for Employer Records" being applied.

There is no dispute that Smith failed to produce the payroll records as required by the "Demand for Employer Records" issued June 19, 1997. This failure constitutes a contravention of Section 46 of the *Regulation*.

Section 28 of the *Regulation* states:

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.*

Based on the evidence provided I conclude therefore that the Director appropriately issued the penalty Determination on August 28, 1997

ORDER

Pursuant to Section 115 of the *Act* I order that the Determination dated August 28, 1997 in the amount of \$500.00 be confirmed in all respects.

Hans Suhr
Adjudicator
Employment Standards Tribunal