

An appeal

- by -

Sirtaj Enterprises Ltd.
("Sirtaj")

- 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: M. Gwendolynne Taylor

FILE No.: 2001/473

DATE OF DECISION: September 12, 2001

DECISION

OVERVIEW

Pursuant to section 112 of the *Employment Standards Act*, Sirtaj Enterprises Ltdl (“Sirtaj”) filed an appeal from a Determination by the Director dated June 14, 2001. The Director found that Sirtaj had contravened Section 28 of the *Act*, by failing to keep proper payroll records. The Director imposed a penalty of \$500.00.

On June 22, 2001, Sirtaj appealed the Determination requesting that the Tribunal cancel the Determination. The reasons for the appeal are that the Director’s determination was based, in part, on

- incorrect information,
- information pertaining to some people who did not work for Sirtaj, and
- an investigation conducted at property not belonging to Sirtaj, thus raising the possibility that employees were working for other companies.

ISSUE

1. Does the evidence support the Director’s Determination that Sirtaj contravened section 28 of the *Employment Standards Act*?
2. Does Sirtaj have to pay a penalty of \$500.00 pursuant to section 98 of the *Act* and section 28 of the *Employment Standards Regulation*?

THE FACTS

On June 27 and September 19, 2000, the Agriculture Compliance Team conducted site visits at locations where Sirtaj employees were working. The Team recorded the names of Sirtaj employees. On January 29, 2001, the Director issued a Demand for Employer Records to Sirtaj. Sirtaj complied with the Demand and the records were reviewed by an Employment Standards Officer. The Officer found that some of the employees recorded during the site visits were not listed in the payroll records or on the daily log. The Director listed the names of these employees in the Determination, under the appropriate date.

Based on the Officer’s review of the records, the Director determined that Sirtaj was not keeping proper payroll records.

ARGUMENT

Sirtaj submitted that the first name the Director listed under June 27 is incorrect and that 3 of the remaining 4 names listed are not employees of Sirtaj. For the September 19 reporting, Sirtaj submitted that the property does not belong to Purewal Farms, as indicated in the Determination. Further, when the Agriculture Compliance Team does the site visit, they do not ask for identification and, therefore, the employees could be working with other employers or contractors.

The Director submitted documents to show that the first name the Director listed under June 27 was also listed in both the daily log and the Employee Interview Sheet. The contravention was that she was not listed in the payroll. For the other three employees, the Director submitted that they had been interviewed but were not recorded in the payroll records for all days and hours worked.

For the 5th employee in the Director's June 27 list, the Director noted that he had been interviewed then and on September 19, but did not show up on the payroll records until November 1, 2000.

In response to Sirtaj's comments on the September 19 reporting, the Director acknowledged that the address had been incorrectly shown as 13544 Hale Road, Pitt Meadows, when in fact the location was the end of Ford Road, Pitt Meadows. The Director submitted that there is no question that Sirtaj employees were harvesting blueberries. The Director noted that the site visit records include the licence number of the bus that transported employees, which is registered to Sirtaj Enterprises Ltd. The Director reiterated the previous finding that employees interviewed were not included in the payroll records.

FINDINGS

Sirtaj bears the onus of proving that the Director's determination was incorrect. I accept the Director's response concerning the address for the September 19 site visit. Accordingly, the Director's findings for September 19 are virtually unchallenged. That alone is sufficient to dismiss the appeal.

For the June 27 site visit, there was one employee the Director listed for whom Sirtaj did not take exception. Again, that is sufficient to find that Sirtaj contravened the *Act*. The Director provided documentation to answer Sirtaj's challenge against one employee. For three others, the Director provided an explanation, without documentation. The Director also submitted that Sirtaj had a previous Determination, in December 1999, for contravening Section 28. Sirtaj did not make any further submissions.

I find that Sirtaj has not demonstrated that the Director's determination was incorrect.

Section 98 of the *Act* permits the Director to impose a penalty, in accordance with the prescribed schedule, if the Director is satisfied that the person has contravened the *Act* or the Regulations. Section 28 of the Regulations establishes a penalty of \$500 for each contravention of section 28 of the *Act*.

I find that the Director had the discretion under Section 98 of the *Act* to impose a penalty. There is nothing in the submissions suggesting that the Director exercised the discretion improperly.

I find that Sirtaj must pay the \$500.00 penalty.

ORDER

Pursuant to section 115 of the *Act*, I confirm the Determination issued June 14, 2001.

M. Gwendolynne Taylor
Adjudicator
Employment Standards Tribunal