

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 -

Sarbjit s. Dhillon
("Dhillon")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE No.: 2000/585

DATE OF DECISION: December 8, 2000

DECISION

OVERVIEW

This is an application by Sarbjit Dhillon (“Dhillon”) under Section 112 of the *Employment Standards Act* (the “Act”) against a Determination of the Director of Employment Standards (the “Director”), dated August 1, 2000. The Determination found that Dhillon had violated Section 46 of the Act by failing to produce proper payroll records after a Demand for Employer Records had been served. The Determination imposed a penalty of \$500.00

The basis of Dhillon’s appeal was that the records in question were in the possession of his accountant. The accountant did not provide the records until after the Determination was issued.

ISSUE TO BE DECIDED

The issue to be decided in this case is whether Dhillon has demonstrated that the Determination contained an error of fact or law and thus should be cancelled.

FACTS

The Director’s delegate received a complaint from Rejean Omer (“Omer”), who had performed services for a business in Prince George, B. C. controlled by Dhillon. The delegate asked Dhillon to provide records to permit him to investigate the complaint. Dhillon wrote to the delegate on June 28, 2000, stating that Omer was not an employee and had leased a car from Emerald Taxi. Omer had returned the car in December 1999, still owing lease payments, according to Dhillon. The letter contained the lease payments Omer had made, but no other records. The delegate then sought payroll records through a Demand for Employer Records with respect to Omer for the period November 1, 1997 through November 30, 1999. The Demand was dated July 4, 2000 and delivered to Dhillon on July 12, 2000. The deadline for producing the records in question was July 27, 2000. According to the delegate, Dhillon did not provide any records by the deadline and did not contact the delegate to request an extension of the deadline or explain his failure to provide the records. Consequently, the Determination was issued.

Dhillon received the Determination on August 2, 2000. On August 23, 2000, he provided the delegate with the records requested. Dhillon stated at that time that his accountant in Vancouver had the records. He did not offer any other explanation for the delay in providing the records to the delegate.

In his appeal, Dhillon repeated his statement that his accountant had control of the records and he (Dhillon) had provided them to the delegate when he received them in August. He

also repeated his assertion that Omer had leased a car from him and thus was not an employee.

ANALYSIS

Section 28 of the *Act* requires an employer to maintain records of hours or days worked and wages paid to an employee. Dhillon did not provide records meeting these requirements before the deadline in a Demand for Employer Records. His initial correspondence with the delegate merely stated the lease payments Omer made. Section 85(1)(f) of the *Act* gives the Director the power to “require a person to produce, or to deliver to a place specified by the director, any records for inspection” The Director’s delegate clearly was acting within his authority when he first issued the Demand for Employer Records. Dhillon did not contact the delegate to request any extension of the deadline in the Demand. Ultimately, Dhillon did produce records on August 23, 2000, but his explanation for the failure to meet the deadline was vague and unconvincing.

Omer’s status as an employee under the *Act*, raised by Dhillon in his appeal, is not relevant to this proceeding, since the delegate was unable to complete his investigation of the complaint due to Dhillon’s failure to produce the necessary records.

Section 28 of the *Employment Standards Regulation* states that the penalty for contravening Section 28 of the *Act* shall be \$500 for each contravention.

Dhillon has not demonstrated any error of law or fact in the Determination of August 1, 2000.

ORDER

For these reasons, the Determination of August 1, 2000 is confirmed. Dhillon must pay a penalty of \$500.00 to the Director.

Mark Thompson

Mark Thompson
Adjudicator
Employment Standards Tribunal

MT/bls