

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-

MacDonald & Wilson Ltd.

(“M & W” or the “employer”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 97/587

DATE OF DECISION: December 16th, 1997

DECISION

OVERVIEW AND ISSUE TO BE DECIDED

This is an appeal brought by MacDonald & Wilson Ltd. (“M & W” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on July 17th, 1997 under file number ER 077-424 (the “Determination”).

By way of the Determination, the Director levied a penalty against M & W in the amount of \$0 based on M & W’s failure to pay a former employee, Mr. Ken Booth, vacation pay and compensation for length of service.

I should note that M & W also appealed the Director’s substantive finding that it had violated sections 58 and 63 of the *Act* with respect to Mr. Booth. This appeal was dismissed and the original determination relating to Mr. Booth was confirmed in Tribunal Decision No. D497/97.

ANALYSIS

Section 29 and Appendix 2 of the *Employment Standards Regulation* provide for a \$0 penalty to be assessed against an employer for failure to pay an employee vacation pay or compensation for length of service, provided that the employer has not previously failed, and been penalized, for failure to pay such monies to an employee.

In the instant case, the penalty Determination is regular on its face and, in light of my decision in the “Booth” appeal, it is my view that the Director was correct in determining that M & W had contravened both sections 58 and 63 of the *Act*. The employer does not challenge the penalty Determination directly, but merely in a derivative sense in that it says the determination at issue in the Booth appeal ought to be cancelled. Accordingly, logic dictates that once the “Booth” determination was confirmed, it would follow, as a matter of course, that the penalty Determination now before me similarly ought to be confirmed.

ORDER

Pursuant to section 115 of the *Act*, I order that the penalty Determination in this matter be confirmed as issued in the amount of \$0.

Kenneth Wm. Thornicroft, Adjudicator