

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-

Classic Doormat Inc.
(the Employer)

-of a Determination issued by-

The Director of Employment Standards
(the Director)

ADJUDICATOR:	Hugh R. Jamieson
FILE NO.:	1999/440
DATE OF DECISION:	November 29, 1999

DECISION

OVERVIEW

This decision deals with an appeal by the Employer against a Determination issued by the Director on June 22, 1999, wherein a penalty of \$500.00 was imposed on the Employer for having failed to produce documents relating to payroll records. The penalty was assessed pursuant to Section 28 (b) of the *Employment Standards Regulation*, B.C. Reg. 396/95 (*the Regulation*). The appeal is based on the Employer's contention that the penalty is unreasonable and should have been waived.

ISSUES TO BE DECIDED

The issue here is whether the the Director properly exercised her discretion under Section 98 of the *Employment Standards Act (the Act)*, to impose a penalty where there has been a violation of *the Act or Regulation*.

FACTS

This matter arises from a complaint from Mr. Gurmeet Singh Bains (the Employee), who alleged that he worked as a production worker for the Employer from September 14, 1998 to December 18, 1998, and that he had not been paid any wages. The Employer was notified of these allegations by letter from the Director's Delegate dated March 26, 1999. The Employer responded to the allegations by producing payroll records showing hours worked by the Employee and copies of cheques purportedly paid to him as wages. The Employee maintained that while these cheques may have been made out in his name, they were never given to him because the Employer had no money in the account.

The Delegate followed this up with a demand dated May 11, 1999, requiring the Employer to produce all cancelled pay cheques cleared by the bank for the entire employment period of the Employee's employment. The Employer did not comply with the demand, but did reply claiming that his accountant or bookkeeper could not locate the cancelled cheques.

ANALYSIS

Section 98 of *the Act* contemplates the imposition of penalties at the discretion of the Director where *the Act or Regulation* have been violated:

“ 98 (1)If the director is satisfied that a person has contravened a requirement of this Act or the regulations or a requirement imposed under section 100, the director may impose a penalty on the person in accordance with the prescribed schedule of penalties.
.....”

The relevant prescribed penalty in situations involving the failure to produce payroll records is contained

in Section 28 (b) of *the Regulation*:

“ 28The penalty for contravening any of the following provisions is \$500.00 for each contravention:

.....

(b) section 3, 13 or 46 of this regulation.

The Director’s authority to require production of payroll records is set out in Section 46 of *the Regulation*:

“ 46 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.”

The maintaining and production of payroll records by employers are vital in the statutory scheme of *the Act* and *Regulation* to the Director’s ability to fully investigate complaints. In the situation here, the production of the cancelled cheques in question was obviously crucial to the outcome of the Delegate’s investigation. Proof that the cheques had been processed through the Employer’s bank account was the only evidence that could break the deadlock in the positions taken by the parties.

As I understand the circumstances from the material before me, not only did the delegate formally demand that the cancelled cheques be produced, it was also apparently made clear verbally to the Employer by the Delegate early in May 1999, that copies of both sides of the pay cheques were required to prove that the Employee had received and had cashed these cheques.

Despite this, even at the appeal stage of the process, the Employer presents copies of only the face of cheques that were purportedly issued to the Employee. The Employer still has not provided any proof that these cheques had been processed through its bank accounts, which is what the Delegate has been seeking all along. In the circumstances, there can be little doubt that there has been a violation of Section 46 of *the Regulation*.

Turning to the issuance of the penalty, it should be made clear that whether the Employer believes that the penalty is unfair or unreasonable is not the point. These are not grounds for an appeal. For the appeal to be successful, the Employer needs to show that the Director’s discretion under Section 98 of *the Act* to impose the penalty in question has been improperly exercised. Improperly in this context means of course, that the Director somehow acted in bad faith, or in an arbitrary or discriminatory fashion.

Looking at the appeal as a whole, there is simply nothing there showing that the penalty was imposed improperly.

The appeal is therefore dismissed accordingly

ORDER

Pursuant to Section 115 of *the Act*, the Determination under review is hereby confirmed.

Hugh R. Jamieson
Adjudicator
Employment Standards Tribunal