

**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 -

Absolute Best Home Care Inc.  
( "Absolute" )

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE No.:** 2000/553

**DATE OF DECISION:** December 13, 2000

## DECISION

### OVERVIEW

Absolute Best Home Care Inc. (which I will henceforth refer to as “the appellant”, “the employer” and also “Absolute”) appeals a Determination which is dated July 21, 2000. The Determination is by a delegate of the Director of Employment Standards (the “Director”). The Determination (“the Penalty Determination”) imposes a \$500 penalty on Absolute for what is said to be a failure to produce records which are required by the *Act*.

The appeal is that no penalty should have been imposed because all records were supplied.

### ISSUES TO BE DECIDED

The matter of whether the Penalty Determination should or should not have been imposed is at issue and underlying that is the matter of whether certain records were produced or not. What I must ultimately decide is whether it is or is not shown that the Determination ought to be cancelled for reason of an error or errors in fact or law.

### FACTS

Patty A. Wallace filed a complaint in which she alleged that Absolute, her former employer, had failed to pay her wages.

Wallace’s complaint was assigned to an Industrial Relations Officer. The officer sent the employer a letter which requested payroll and work records. That was followed by a Demand for Employer Records, sent to Absolute on the 28<sup>th</sup> of February, 2000 (“the Demand for Employer Records”). What was demanded were records for the period January 15/99 to September 10/99. The delegate advised the employer by separate letter that it “is essential that you include with the employer records for this complainant, the daily records of hours worked for the period specified.”

The Penalty Determination imposes a \$500 penalty because “the employer ... did submit not submit the records that were requested”. Absolute is said to have contravened section 46 of the *Employment Standards Regulation* (“the *Regulation*”). Elsewhere in the determination, the delegate indicates that the daily record of hours worked by the complainant was requested but not produced.

Absolute, on appeal, claims that complete records were produced, a daily record of work included. What is sent to the Tribunal, however, is a copy of the employee’s record of hours worked on which Tamara Zilcosky, the owner of Absolute, has written what is her recollection of work by Wallace. The employer does not produce a daily record of hours worked, nor evidence which clearly establishes that records were produced as the Demand for Employer Records required.

## ANALYSIS

I am satisfied that this appeal can be decided on the basis of written submissions as section 107 of the *Act* allows.

**107** Subject to any rules made under section 109 (1) (c), the tribunal may conduct an appeal or other proceeding in the manner it considers necessary and is not required to hold an oral hearing.

The Director may demand any record which is relevant to the investigation of a complaint under the *Act* (section 85 (1)(c) of the *Act*).

**85** (1) For the purposes of ensuring compliance with this Act and the regulations, the director may do one or more of the following:

...

- (c) inspect any records that may be relevant to an investigation under this Part;
- (d) on giving a receipt for a record examined under paragraph (c), remove the record to make copies or extracts;
- (e) require a person to disclose, either orally or in writing, a matter required under this Act and require that the disclosure be under oath or affirmation;
- (f) require a person to produce, or to deliver to a place specified by the director, any records for inspection under paragraph (c).

Section 28 of the *Act*, requires that employers keep detailed employment records.

**28** (1) For each employee, an employer must keep records of the following information:

- (a) the employee's name, date of birth, occupation, telephone number and residential address;
- (b) the date employment began;
- (c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis;
- (d) the hours worked by the employee on each day, regardless of whether the employee is paid on an hourly or other basis;**
- (e) the benefits paid to the employee by the employer;
- (f) the employee's gross and net wages for each pay period;
- (g) each deduction made from the employee's wages and the reason for it;
- (h) the dates of the statutory holidays taken by the employee and the amounts paid by the employer;
- (i) the dates of the annual vacation taken by the employee, the amounts paid by the employer and the days and amounts owing;

(j) how much money the employee has taken from the employee's time bank, how much remains, the amounts paid and dates taken.

(my emphasis)

(2) Payroll records must

(a) be in English,

(b) be kept at the employer's principal place of business in British Columbia, and

(c) be retained by the employer for 7 years after the employment terminates.

Section 46 of the *Regulation* requires that any records that are ordered pursuant to section 85 (1)(f) be produced as and when required.

**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.

In the event that an employer is ordered to produce records and then fails to produce the records, the Director may impose a penalty of \$500 under the *Regulation*.

**28** The penalty for contravening any of the following provisions is \$500 for each contravention:

section 25(2)(c), 27, 28, 29, 37(5) or 48(3) of the *Act*;

section 3, 13, 37.6(2) or 46 of this regulation.

The Penalty Determination imposes a \$500 penalty because the employer failed to keep and/or produce a record of the number of hours worked each day by an employee. The *Act* clearly requires that employers keep such information (section 28). It is clear that Absolute was ordered to produce a record of hours worked and that contrary to section 46 of the *Regulation*, the employer did not produce such a record. I therefore order that the Penalty Determination be confirmed.

## ORDER

I order, pursuant to section 115 of the *Act*, that the Penalty Determination dated July 21, 2000, be confirmed.

**Lorne D. Collingwood**

**Lorne D. Collingwood**

**Adjudicator**

**Employment Standards Tribunal**