

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 -

Scott Robertson operating as Scott Robertson Transport
("Robertson")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David B. Stevenson

FILE No.: 1999/639

DATE OF DECISION: December 24, 1999

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Scott Robertson, operating as Scott Robertson Transport (“Robertson”) of a Determination which was issued on September 29, 1999 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Robertson had contravened Section 46 of the Act by failing to produce all the required payroll records and, under Section 28(b) of the *Employment Standards Regulations* (the “Regulations”), a penalty in the amount of \$500.00 was imposed.

The Tribunal has concluded that an oral hearing is not necessary in this case.

ISSUES TO BE DECIDED

The issue is whether Robertson has shown that the Determination was wrong to conclude he was in contravention of Section 46 of the Act and that he should have been fined.

FACTS

The facts, which have not been challenged by Robertson, are set out as follows in the Determination:

On July 22, 1999, Ivy Hallam issued a Demand for Records pursuant to Section 85(1)(f) of the *Employment Standards Act* (the Act) to Scott Robertson operating as Scott Robertson Transport. A copy of the Demand and the Canada Post Acknowledgment of Receipt card are attached. This Demand was necessary because the complainant, Christopher Sturdy, alleged he was owed overtime wages. The employer had sent only partial records. Despite phone calls, letter and the Demand for Records, the employer did not send in all the records required. A copy of the letter is attached.

Robertson says, in his reason for appeal:

1. The determination is wrong because like instructed I faxed off all the time cards for the employee Christopher Sturdy. There were 2 time cards in question neither of which were turned in to me from the employee. This was explained to the adjuster at the time of the complaint.
2. I am making this appeal because I do not feel it is fair to punish the employer for a mistake made by the employee.
3. I am seeking to have the \$500.00 penalty overturned. I will gladly pay for the overtime that Christopher Sturdy is seeking. The last day worked I have a time

card for the David Brock (the driver) stating that he worked for 10 hours. I do not see how Charioteer could work another 3 hours after the truck was parked.

In reply to the appeal, the Director noted that the time cards faxed to the investigating officer were practically unreadable and, in any event, did not include a time card for a period relevant to the complaint. While Robertson alleged that the employee had failed to hand in a time card for that period, two pay cheques had been issued during that period and no information or backup was provided by Robertson to the investigating officer relating to the amounts paid. The investigating officer asked for all original time cards. None were provided. The payroll records were demanded. None were provided.

ANALYSIS

The facts support a reason for the issuance of the Demand for Records. The facts also confirm that Robertson ignored the Demand. It is apparent on the face of the letter accompanying the Demand that the records Robertson had faxed were considered to be incomplete and that originals of the payroll records and available time sheets were required. Accordingly, he is unable to rely on the fact that he provided some records by fax. Equally, he is unable to rely on the suggestion that he told the investigating officer there were two missing time cards. Had he responded to the Demand and pleaded that he was unable to provide two missing time cards, the penalty may not have been assessed. The fact is, however, that he ignored the entire Demand, providing nothing at all in response to it. He was adequately warned of the potential consequences of failing to provide the records demanded.

Robertson has not shown any error in the Determination and the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated September 29, 1999 be confirmed.

David B. Stevenson
Adjudicator
Employment Standards Tribunal