

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 -

Epicurean Steakhouse Ltd.
("Epicurean")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: John M. Orr

FILE No.: 2000/556

DATE OF DECISION: December 13, 2000

DECISION

OVERVIEW

This is an appeal by Epicurean Steakhouse Ltd (“Epicurean”) pursuant to section 112 of the *Employment Standards Act* (“the Act”) from a determination dated July 20, 2000 (File No. 051-971) by the Director of Employment Standards (“the Director”).

The Director issued this penalty determination as a result of the failure by Epicurean to comply with a demand for employer records. Epicurean appeals the penalty on four grounds:

1. That they did not deliberately withhold the records;
2. That poor economic conditions led to a tax audit that led to some disruption in their operations;
3. That the Revenue Agency had not yet provided Epicurean with corrected T4 amounts;
4. That the penalty will cause hardship.

ANALYSIS

The demand for employer records is dated June 9, 2000 and was served on Epicurean on June 13, 2000. The Director points out that Epicurean was contacted and promised to deliver the records by July 10, 2000. On July 12, 2000 Epicurean again promised to produce the required records by July 14, 2000. The determination was dated July 20, 2000 when no records were produced. The Director’s submission on this appeal is dated September 5, 2000 and records had still not been produced as of that date.

Epicurean has not denied the above-mentioned facts. While Epicurean refers to a tax audit and makes some suggestion that this interfered with their operations, they give no details as to when the audit commenced or why the audit prevented them from providing records to the Director. While I might speculate that such an audit would cause some disruption in the business the onus is on Epicurean to persuade the Tribunal that the penalty should not have been imposed.

Whether or not the failure to provide the records was “deliberate” is not relevant unless the employer can provide some substantial reason to explain why production of the records was not possible. The involvement of the Revenue Agency does not explain why the records were not produced.

It is unfortunate if the penalty causes hardship but this is a hardship that has been created by the failure of the company to co-operate with the Director.

In conclusion, there is nothing in the appeal submissions by Epicurean that meets the onus on the employer to satisfy the Tribunal that the penalty should not have been imposed.

ORDER:

Pursuant to section 115 of the *Act* I order that the determination is confirmed.

John M. Orr

**John M. Orr
Adjudicator
Employment Standards Tribunal**