

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 -

M. A Concrete Ltd.

(the "Employer")

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE No.: 2000/698

DATE OF DECISION: December 22, 2000

Section 81(1)(a) of the Act requires the Director to give reasons for the Determination to any person named in it (*Randy Chamberlin*, BCEST #D374/97). Given that the power to impose a penalty is discretionary and is not to be exercised for every contravention, the Determination must contain reasons which explain why the Director, or her delegate, has elected to exercise that power in the circumstances. It is not adequate to simply state that the person has contravened a specific provision of the *Act* or *Regulation*. In *Narang Farms and Processors Ltd.*, BCEST #D482/98, at page 2, the penalty process is summarized as follows:

“In my view, penalty determinations involve a three-step process. First, the Director must be satisfied that a person has contravened the *Act* or the *Regulation*. Second, if that is the case, it is then necessary for the Director to exercise her discretion to determine whether a penalty is appropriate in the circumstances. Third, if the Director is of that view, the penalty must be determined in accordance with the *Regulation*.”

I am of the view that the appeal of the Determination should be dismissed. Section 28 of the *Act* requires that the employer keep records of certain information. Section 46 of the *Regulation* provides that a person required under Section 85(1)(f) of the *Act* to produce records, must produce and deliver the records as and when required. In this case, a second Demand was issued. The Employer, while referring to messages left with (or for) the delegate, does not take issue with the assertion in the Determination, namely that there was a conversation between the Employer and the delegate whereby the Employer received an extension of the time to deliver the documents requested. Surely, if the Employer did not, in fact, have the documents requested, that would have been the time to raise this issue. There is no explanation in the Employer's submission for this failure. Despite the extension until August 25, 2000, the Employer had not produce the documents as of the time the Determination was issued on September 14, 2000. I am satisfied that the director exercised her discretion properly when she issued a penalty for failure to produce documents following an extension of time to deliver those documents.

In the result, the appeal fails.

ORDER

Pursuant to Section 115 of the Act, I order that the Determinations in this matter, dated September 14, 2000 be confirmed.

Ib S. Petersen

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Adjudicator
Employment Standards Tribunal