

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 -

Mini Move Inc.
("Mini Move")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 97/815

DATE OF DECISION: December 16, 1997

DECISION

OVERVIEW

This is an appeal by Mini Move Inc. (“Mini Move”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated November 5, 1997. The Determination imposed a penalty of \$500.00 on Mini Move for its failure to produce or deliver records, thereby contravening Section 46 of the *Employment Standards Regulation* [B.C. Reg. 396/95].

ISSUE TO BE DECIDED

Was the penalty imposed on Mini Move by the Director’s delegate proper in all the circumstances?

FACTS

The Determination relied on the following facts as grounds for finding a contravention of Section 46 of the *Regulation*:

On June 25, 1997 a Demand for Employer Records was issued by John Hartmann, Industrial Relations Officer. A copy of this Demand is attached. You failed to produce or deliver the records described in this Demand.

In its Reasons for Appeal, Mini Move submits, *inter alia*, that the “... initial request for information did not reach us.” By that, I take Mini Move to assert that it did not receive the Demand for Employer Records dated June 25, 1997. However, in reply, the Director’s delegate submits that the Demand was sent to the Registered & Records Office address of the Corporation (1839 Franklin Street, Vancouver) by certified mail.

In a letter dated November 20, 1997 John Anthony wrote to John Hartman to explain the record keeping system that Mini Move uses:

“All of our work is scheduled on a custom-designed program that is located on our computer at 1839 Franklin Street, Vancouver and also on my computer in Halfmoon Bay.”

The Determination which is under appeal was sent by certified mail to Mini Move at 1839 Franklin Street and was delivered (as evidenced by a signed Acknowledgment of Receipt) on November 7, 1997.

In summary, Mini Move submits:

“ ... let us reaffirm that we are not trying to avoid your request and that this is the only a communication problem. We find the postal system to be unreliable and would like to request that further inquiries from your office be accompanied by a phone call. We live by our phones and never miss a message.”

ANALYSIS

Section 28 of the *Act* requires employers to keep detailed payroll records for each employee. Specifically, Section 28(1)(d) requires the employer to record “the hours worked by an employee on each day, regardless of whether the employee is paid on an hourly or other basis.”

Section 85(1)(c) of the *Act* describes the powers given to the Director of Employment Standards to inspect any records that may be relevant to an investigation under Part 10 of the *Act*. Section 85(1)(f) permits the Director to:

require a person to produce, or to deliver to a place specified by the Director, any records for inspection under paragraph (c).

Section 46 of the *Regulation* (B.C. Reg. 396/95) states:

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 penalty was imposed by the Director’s delegate under authority given by Section 98 of the *Act* and Section 28 of the *Regulation*.

Section 28 of the *Regulation* establishes a penalty of \$500.00 for **each contravention** of Section 28 of the *Act* and Section 46 of the *Regulation*. Thus, the Director has no discretion concerning the amount of the penalty to be imposed once she has determined that a contravention of Section 46 of the *Regulation* has occurred.

Section 122 of the *Act* sets out the requirements for service of determinations and demands, as follows:

- 122 (1) A determination or demand that is required to be served on a person under this Act is deemed to have been served if
 - (a) served on the person, or
 - (b) sent by registered mail to the person's last known address.
- (2) If service is by registered mail, the determination or demand is deemed to be served 8 days after the determination or demand is deposited in a Canada Post Office.

It is clear from the evidence that both the Demand and the Determination were delivered by certified mail to Mini Move at 1839 Franklin Street, Vancouver which was and still is the address for both the “Registered Office” and the “Records Office”. Thus, under Section 122 of the *Act*, the Determination and the Demand are deemed to have been served properly on Mini Move.

There is no requirement that the Director’s delegate accompany the issuance of every demand or determination with a telephone call to the person(s) being served.

ORDER

I order under Section 115 of the *Act*, that the Determination be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC:sr