

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 -

Cross Canada Autobody Management Systems Inc.
Operating As Boyd Autobody
("Cross Canada")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 97/893

DATE OF DECISION: December 12, 1997

DECISION

OVERVIEW

This is an appeal by Cross Canada Autobody Management Systems Inc. Operating As Boyd Autobody (“Cross Canada”), under Section 112 of the *Employment Standards Act* (the “Act”), against Determination #PDET 000674 which was issued on November 3, 1997. The Determination imposed a penalty of \$500.00 on Boyd Autobody for its failure “ ... to produce or deliver records as and when required” based on the following facts:

On July 4, 1997 a Demand for Employer Records was issued by Lesley A. Christensen, Industrial Relations Officer. The Demand was sent by certified Mail, and was received by the employer on July 9, 1997. The records were to be delivered by July 21, 1997. Hours of work records were delivered, but the employer failed to deliver payroll and termination of employment records as specified in the Demand for Employer Records.

The Determination imposed a penalty under Section 28 of the *Employment Standards Regulations* [BC Reg 396/97] (the “Regulation”), based on a finding that Cross Canada had contravened Section 46 of the *Regulation*.

Robin M. Kersey (counsel for Cross Canada) submits that Cross Canada delivered “those records which it thought were required” pursuant to a Demand for Employer Records which was issue don July 4, 1997. Mr. Kersey also submits:

A further Demand for Records has now been issued to our client with respect to the some two employees identified in the original Demand. Our client will deliver to the Industrial Relations Officer all available records. If any further records are required, our client will make same available upon request therefor.

We respectfully submit that the purpose if the statutory requirements has been met, i.e., our client has provided or will provide to Employment Standards any information required by Employment Standards with respect to its employees. In the circumstances, we respectfully request that the penalty imposed pursuant to the Determination by revoked.

It appears from the documents which I have reviewed that Cross Canada did deliver some hours of work records. However, those records are not consistent with the hours of work which the complainants submitted to the Director’s delegate.

Cross Canada did not deliver or produce payroll records no “records pertaining to termination of employment without notice” as required in the Demand dated July 4, 1997.

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 Regulations (BC 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 *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 28 has occurred.

Section 29(2) of the *Regulation* sets out the penalty for contravening a provision or requirement listed in Appendix 2 of the *Regulation*. In particular, Section 29(2)(a) of the *Regulation* imposes a \$) penalty for contravening a “specific provision”. I conclude from this that the Legislature intended that a \$500.00 penalty would be imposed for **each contravention** of Section 28 of the *Act*.

ORDER

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

Geoffrey Crampton
Chair