

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 -

Woolworth Canada, Inc.
(the “Employer”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Mark Thompson

FILE NO.: 97/671

DATE OF DECISION: January 26, 1998

DECISION

OVERVIEW

This is an appeal brought by Woolworth Canada Inc. (the “Employer”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a Delegate of the Director of Employment Standards (the “Director”) on August 22, 1998. The appeal was decided on the basis of written materials submitted by the Employer and the Director. The Determination imposed a penalty of \$500 on the Employer for contravening Section 48 of the *Employment Standards Regulation* by failing to deliver employer records within the time limits contained in a Demand for Employer Records issued by the Director’s Delegate.

ISSUE TO BE DECIDED

Should the Employer be assessed a penalty for its failure to respond to the Demand for Employer Records?

FACTS

Most of the facts in this case were not in dispute. A former employee of the employer complained to the Employment Standards Branch that he had not received vacation pay as required by the *Act*. The Director’s Delegate sent the Employer a letter on July 15, 1997 explaining the facts of the allegation and a Demand for Employer Records for the previous two years of the complainant’s employment. The deadline for production of the records was July 30, 1997. The Employment Standards Branch also sent the complainant a letter on July 11, 1997 warning him that there might be a delay in the investigation of his complaint and suggesting that he contact his former employer directly and attempt to resolve his complaint. Documents before the Tribunal demonstrated that the Employer received the Demand for Employer Records on July 21, 1997. A member of the Employer’s Human Resources Department in Toronto called the Branch on either July 24, 1997 (according to the Director) or on or about July 28, 1997 (according to the Employer). The Director’s Delegate did not dispute that the Employer’s representative left a voice mail message stating that it would not be possible for her to gather the documents by the July 30, 1997 deadline. Furthermore both parties appear to admit that no one from the Employment Standards Branch communicated with the Employer’s representative in response to the voice mail message.

As of August 22, 1997, the Branch had not received the records named in the Demand for Employer Records, and the Determination imposing a penalty was issued. On August 28, 1997, a store manager of the Employer advised the Employment Standards Branch that the Determination had been forwarded to the Employer’s legal department. On September

2, 1997, the Employer filed its appeal against the Determination. The Employment Standards Branch sent a new Demand for Employer Records by fax on September 4, 1997, with a deadline of September 10, 1997. On September 5, the Employer sent a fax to the Employment Standards Branch stating that it had settled with the complainant, so the records were not required. The Employment Standards Branch replied the same day, stating that the records were still required. The Employer requested an extension of the deadline to September 15, 1997 on September 8, 1997. The Employment Standards Branch granted an extension to September 11, 1997. The records were received on September 10, 1997. In its appeal, the Employer acknowledged that it owed the complainant vacation pay, and stated that it would pay him directly.

ANALYSIS

The Employer argued that because the Director's Delegate did not respond to the voice mail message from the Human Resources Department, it was led to believe that the July 30, 1997 deadline would not be enforced by the Delegate. The Director's position is that an extension of time limit must be authorized by a Delegate, and there was no such authorization in this case.

The *Act* and the *Regulation* are clear that the Director has the authority to impose a penalty for failure to produce records within the time limits contained in a Demand for Employer Records. One of the purposes of the *Act* as stated in Section 2(d) is to "provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act." Consistent with that purpose, the *Act* gives the Director authority to require documents to be produced in a timely fashion and to impose penalties when parties do not respond within deadlines imposed.

In this case, the Employer did not even request an extension of the July 30, 1997 deadline. It merely informed the Employment Standards Branch that it would be late producing the records. The Branch waited another three weeks, without receiving the records, before issuing the Determination containing the penalty. Another two weeks passed without the records being received, so another Demand for Employer Records was issued. When the Employer requested an extension of the second deadline, the Branch granted the extension.

The Employer has not provided any evidence or argument to justify the cancellation of the Determination. It was tardy in producing the required records, thus delaying payment to its former employee, who was denied his rights under the *Act*.

ORDER

For these reasons, pursuant to Section 115 of the *Act*, the Determination of August 22, 1997 be confirmed.

Mark Thompson
Adjudicator
Employment Standards Tribunal

MT/bls