

An appeal

- by -

Punjab Driving Schools Inc.

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: John M. Orr

FILE No.: 2001/542

DATE OF DECISION: December 4, 2001

DECISION

OVERVIEW

This is an appeal by Punjab Driving Schools Inc. (“PDS”) pursuant to section 112 of the *Employment Standards Act* (“the Act”) from a penalty determination dated June 29, 2001 by the Director of Employment Standards (“the Director”).

In a separate determination of the same date the Director found that PDS operated driving schools and owed wages to an employee, Anchaljit Chahal (“Chahal”), in the amount of \$692.85 in contravention of sections 17 and 18 of the *Act*. The employer appealed but the Tribunal confirmed the corporate determination.

The penalty determination in the amount of \$150.00 was based on the same facts but the quantum of the penalty was calculated on the basis that there had been a previous penalty determination against PDS on September 15, 1998.

PDS appeals the June 29, 2001 penalty determination because the first penalty was successfully appealed and therefore this most recent penalty should be a \$0 penalty.

The Tribunal previously decided that it was appropriate that this appeal be decided on the basis of a written decision.

FACTS AND ANALYSIS

The facts as setout in the penalty determination are as follows:

On, September 15 1998, Ken Elchuk, a delegate of the Director, issued a Determination which found that Punjab Driving Schools Inc. had contravened Sections 17(1) and 18(2) of the Act. That Determination was not appealed.

On June 29 2001, Lynne Egan, a delegate of the Director, issued a Determination which found that Punjab Driving Schools Inc. had contravened sections 17(1) and 18(2) of the Act. This is the second time that Punjab Driving Schools Inc. was found to have contravened sections 17(1) and 18(2) in Part 3 of the Act.

As this is the second time Punjab Driving Schools Inc. has contravened Part 3 of the Act a penalty of \$150.00 is issued pursuant to section 98(1) of the Act.

PDS appeals this penalty determination because they submit that the September 15, 1998 Ken Elchuk determination was appealed. PDS submits and that the appeal was successful because it was settled before a hearing in the amount that PDS had claimed from the beginning was the correct amount.

The Director's submission, signed by Lynne Egan, concedes that the 1998 Ken Elchuk determination was appealed and that it was settled. Ms. Egan submits "The appeal, therefore, was considered withdrawn in favour of the settlement." Ms. Egan submits that despite the settlement the original penalty determination remained in effect. Therefore, the June 29 2001 penalty determination should be upheld as a second penalty.

I have reviewed the files and find no record to indicate that the PDS appeal was 'withdrawn' in relation to the 1998 determinations. When Ms. Egan submits that the appeal "was considered withdrawn" it is not clear by whom it was so considered. I must assume that she means that the Director considered the appeal withdrawn. However, there is no factual basis upon which such consideration could have been based.

A Memorandum of Agreement was signed by the parties to witness that the settlement was in full and final settlement of the appeal. There is no indication that the appeal was 'withdrawn'. There is no acknowledgement that there was a contravention of Part 3 of the *Act*.

PDS disputed that there had been any contravention of the *Act* and that question was never resolved, as the appeal was never heard. It would be unreasonable and unfair to treat the 1998 situation as a first contravention under these circumstances.

The purposes of the *Act* as set out in section 2 include the purpose to promote the fair treatment of employees and employers. It is also a purpose of the *Act* to encourage open communication between employers and employees and to provide fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*. It is very clearly the intent of the legislation to encourage settlements of disputes. It would be counter-productive to these purposes of the *Act* and would undermine the whole settlement process to maintain a penalty in place after a dispute has been fairly and reasonably settled.

I am satisfied that PDS has met the onus of showing that the penalty determination was based on wrong information i.e. that the 1998 determination had not been appealed. I am also satisfied that the settlement of the 1998 dispute acted to "stay" the penalty determination. Although it was never cancelled neither was it confirmed. It was of no force or effect and was therefore not a proper basis for the calculation of the 2001 penalty.

I conclude therefore that the penalty should have been a \$0.00 penalty and as the corporate determination has been confirmed the penalty determination should be varied and confirmed in the amount of \$0.00.

ORDER

Pursuant to section 115 of the *Act* I order that the Penalty Determination dated June 29, 2001 is varied from \$150.00 to zero (\$0.00) dollars.

John M. Orr
Adjudicator
Employment Standards Tribunal