

An appeal

- by -

Bajwa Labour Ltd.

- of a Determination issued by -

The Director of Employment Standards

pursuant to section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

**PANEL:** Michelle F. Good

**FILE NO.:** 2018A/99

**DATE OF DECISION:** November 27, 2018

## DECISION

### SUBMISSIONS

Bhupinder S. Bajwa

on behalf of Bajwa Labour Ltd.

### OVERVIEW

1. On September 18, 2018, pursuant to section 112(2) of the *Employment Standards Act* (“ESA”), Bajwa Labour Ltd., (“Bajwa”), a licenced Farm Labour Contractor (“FLC”), filed an appeal of a Determination (the “Determination”) issued by Melanie Zabel, a delegate (“Delegate Zabel”) of the Director of Employment Standards (the “Director”). In that Determination, the Director found that Bajwa had contravened section 6(1)(f) of the *Employment Standards Regulation* (the “Regulation”) by failing to file with the Director an up-to-date registration number and inspection certificate for a vehicle that transported employees.
2. In the Determination, Bajwa was ordered to pay an administrative penalty in accordance with section 29(1) of the *Regulation*. This section provides that in the case of a second offense within a period of three years, the mandatory fine escalates from \$50,000 to \$2,500.00. Bajwa contravened section 6(1)(f) in September 2016, less than three years from the current infraction. Delegate Zabel therefore ordered that Bajwa be required to pay a penalty of \$2,500.00.
3. This decision is based on Bajwa’s submissions, the section 112(5) record that was before the Delegate at the time the Determination was made, and the Reasons for the Determination.

### ISSUE

4. Did the Director fail to observe the principles of natural justice in making the Determination?

### ARGUMENT

5. Bajwa argues that the inspection in fact had been completed within the necessary time frame but that it was not submitted to the Director as required by the *ESA* as the result of a misunderstanding, or in the alternative, he forgot to.

### THE FACTS

6. Bajwa is a company incorporated under the laws of British Columbia on September 10, 2015, as confirmed by a Corporate Search conducted on August 27, 2018 (Incorporation Number BC1048618). Bhupinder Singh Bajwa (“Mr. Bajwa”) is listed as the sole director and officer.
7. A roadside inspection of Bajwa’s vehicle which was used for transporting farm workers was conducted on July 10, 2018. At that time, it was found that the registration number that the Director had on file for the vehicle had expired on June 9, 2017.

8. On July 13, 2018, Rachael Larson, a delegate (“Delegate Larson”) of the Director of Employment Standards, issued Bajwa a letter noting that it may be in contravention of the *ESA* for failing to file an up-to-date registration number or a valid inspection report for the vehicle in question.
9. On July 23, 2018, the Langley office of the Employment Standards Branch (the “Branch”) received a faxed copy of an inspection report for the vehicle in question showing the expiration date as December 31, 2018.
10. On August 10, 2018, Delegate Larson spoke with Mr. Bajwa by telephone and asked him if he intended to respond to the letter of July 13, 2018. Delegate Larson further asked Mr. Bajwa if he disputed her preliminary assessment as outlined in her letter of July 13, 2018. Mr. Bajwa stated that he did not dispute it and that he had forgotten to file an up-to-date registration and a valid vehicle inspection with the Branch.
11. On August 30, 2018, the Director issued a Determination in the matter, and Bajwa was ordered to pay a mandatory administrative penalty as required by section 29(1) of the *Regulation* in the amount of \$2,500.00.

## ANALYSIS

12. Section 114 of the *ESA* provides that at any time after an appeal is filed and without a hearing of any kind the Tribunal may dismiss all or part of the appeal if the Tribunal determines that any of the following apply:
  - 114 (1) At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of the appeal if the tribunal determines that any of the following apply:
    - (a) the appeal is not within the jurisdiction of the tribunal;
    - (b) the appeal was not filed within the applicable time limit;
    - (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
    - (d) the appeal was made in bad faith or filed for an improper purpose or motive;
    - (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
    - (f) there is no reasonable prospect that the appeal will succeed;
    - (g) the substance of the appeal has been appropriately dealt with in another proceeding;
    - (h) one or more of the requirements of section 112 (2) have not been met.

13. Section 112(1) of the *ESA* provides that:
- 112 (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:
- (a) the director erred in law;
  - (b) the director failed to observe the principles of natural justice in making the determination;
  - (c) evidence has become available that was not available at the time the determination was being made.
14. In its Appeal Form, Bajwa has selected as grounds for appeal that the Director failed to observe the principles of natural justice in making the Determination in this matter.
15. However, Bajwa fails to identify how the Director failed to meet the standards of natural justice.
16. An appeal based on an alleged failure to meet the standards of natural justice is a claim that proceedings before the Director were somehow conducted unfairly, resulting in the employer either not having the opportunity to know the case that is made against it, or not being given the opportunity to respond as is provided by section 77 of the *ESA*.
17. In the materials provided by Bajwa in this appeal, at no time does Mr. Bajwa state that Bajwa was not informed of the contravention alleged. Likewise, Bajwa does not claim that it was denied an opportunity to respond to the contravention alleged by the Director.
18. The facts are clear that Delegate Larson communicated the alleged offense in writing and when Bajwa failed to reply she followed up on her correspondence by telephone with Bajwa and specifically asked Mr. Bajwa if he disputed her preliminary finding that Bajwa had failed to comply with section 6(1)(f). Mr. Bajwa stated to the delegate that he did not dispute her preliminary finding that Bajwa had not provided the Branch with the documents required by section 6(1)(f). In fact, he admits that he had forgotten to submit the documents on behalf of Bajwa as required.
19. Having reviewed the record and the Reasons for the Determination, I am not satisfied that Bajwa was unaware of the alleged contravention or that it was denied an opportunity to be heard in response to the alleged contravention.
20. The burden of proof rests with Bajwa to establish that a contravention of the principles of natural justice occurred. Bajwa has offered neither arguments or evidence to support such a finding and has not established that the Director failed to observe the principles of natural justice in making the Determination as is provided for in section 112(1)(b) of the *ESA*. The appeal must fail.

**ORDER**

21. Pursuant to section 115(1) of the *ESA*, I order that the Determination dated August 30, 2018, be confirmed.

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**Michelle F. Good**  
**Member**  
**Employment Standards Tribunal**