

Citation: Dhillon Labour Contractors Ltd. (Re)
2018 BCEST 90

An appeal

- by -

Dhillon Labour Contractors Ltd.
("DLC")

- 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: Shafik Bhalloo

FILE NO.: 2018A/84

DATE OF DECISION: August 29, 2018

DECISION

SUBMISSIONS

Dalbir Dhillon

on behalf of Dhillon Labour Contractors Ltd.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “ESA”), Dhillon Labour Contractors Ltd. (“DLC”) has filed an appeal of a Determination issued by a delegate (the “Delegate”) of the Director of Employment Standards (the “Director”) on June 22, 2018 (the “Determination”).
2. The Determination found that DLC had contravened section 6(1)(a) and 6(1)(d) of the *Employment Standards Regulation* (the “Regulation”):
Duties of farm labour contractors
6 (1) A farm labour contractor must do all of the following:
 - (a) carry the farm labour contractor's licence at all times while carrying on the licensed activities and display a copy of the licence prominently on all vehicles used for transporting employees;
 - ...
 - (d) display prominently at the site where the work is to be performed, and on all vehicles used by the farm labour contractor for transporting employees, the wages the farm labour contractor is paying to employees.
3. Pursuant to section 29 of the *Regulation*, the Determination ordered DLC to pay two administrative penalties of \$500.00 each for breach of the above sections of the *Regulation* for a total of \$1,000.00.
4. DLC’s appeal alleges that the Director failed to observe principles of natural justice in making the Determination.
5. It should be noted that the expiry date for the appeal of the Determination was 4:30 p.m., on July 30, 2018. An incomplete appeal was sent to the Tribunal on July 30, 2018, via email after 4:30 pm. The appeal is considered received by the Tribunal on July 31, 2018. The incomplete appeal consisted of the Appeal Form and written reasons and argument dated July 30, 2018. Missing from DLC’s appeal were: a complete copy of the Determination, the Reasons for the Determination (the “Reasons”), and written reasons for requesting an extension of time to appeal. The Tribunal requested the missing documents from DLC by contacting its sole director and officer, Dalbir Dhillon (“Mr. Dhillon”), by telephone. Mr. Dhillon obliged and provided the missing documents along with other supporting documents. At the Tribunal's request, Mr. Dhillon resubmitted the Appeal Form with a corrected appellant name of DLC on July 31.
6. In correspondence dated August 1, 2018, the Tribunal notified the parties, among other things, that it had received DLC’s appeal and request to extend the appeal period and that no submissions were being

sought from the Director of Employment Standards on either the merits of the appeal or the request to extend the appeal period at this stage. In the same correspondence, the Tribunal requested the Director to provide the Tribunal with the section 112(5) record (the “Record”).

7. The Tribunal received the Record from the Delegate of the Director and sent the same to DLC on August 2, 2018. DLC was given the opportunity to object to its completeness by 4:00 p.m. on August 20, 2018. DLC did not file an objection. Accordingly, the Tribunal accepts the Record as complete.
8. By correspondence dated August 24, 2018, the Tribunal advised the parties that a Panel has been assigned to assess the appeal, and if the Panel determines all or part of the Appeal should be dismissed under section 114(1) of the *ESA*, the Panel will issue a decision. If all or part of the appeal is not dismissed, the Tribunal will seek submissions on the merits of the appeal, and DLC will be given an opportunity to make a final reply to the submissions, if any. I find the letter should have more properly stated that if all or part of the appeal is not dismissed then the Director will be invited to make submissions on DLC’s application for an extension of time to file its appeal and the merits of the appeal. DLC will then be given an opportunity to make a final reply to the submissions, if any. I find nothing turns on this omission in the letter. Accordingly, at this stage, I will assess the Appeal under section 114(1) of the *ESA* based on the Determination, the Reasons, the Appeal Form and written submissions of DLC, and my review of the Record that was before the Director when the Determination was being made.

ISSUE

9. The issue to be considered at this stage of the proceeding is whether there is any reasonable prospect that DLC’s appeal can succeed.

THE FACTS

10. On March 14, 2018, DLC was issued a Farm Labour Contractor (“FLC”) licence under the *ESA* permitting it to employ a maximum of 26 employees. The licence is set to expire on March 13, 2021.
11. As part of the FLC licensing process, applicants are required to pass a written examination to satisfy the Director with their knowledge of the *ESA* and *Regulation*. Also, as part of the licensing process, applicants are taken through an application checklist to ensure their understanding of their obligations under the statutory regime, including sections 6(1)(a) and 6(1)(d) of the *Regulation*. Mr. Dhillon successfully completed the examination and fulfilled the licensing requirements.
12. On May 29, 2018, at 6:35 a.m., the Agricultural Compliance Team of the Employment Standards Branch (the “Team”) conducted a roadside inspection (the “Inspection”) in conjunction with Commercial Vehicle Safety and Enforcement (“CVSE”) and WorkSafe BC. The purpose of this inter-agency effort was to inspect vehicles being used to transport employees to make sure compliance with the legislation.
13. During the Inspection, the Team inspected a vehicle with the licence plate number MH0717 (“vehicle MH0717”), which was driven by Lakhmir Singh Brar (“Mr. Brar”). Mr. Brar identified the vehicle as one of DLC’s vehicles and stated he was transporting seven farm workers to Manjit Singh’s rhubarb field in Abbotsford, BC.

14. The Team observed that vehicle MH0717 did not display anywhere a valid copy of DLC's FLC licence, and there was no notice posted anywhere on the vehicle displaying the wages being paid to the workers ("wage rate notice"). When the Team questioned Mr. Brar about these documents and why they were not posted on the vehicle, Mr. Brar pointed to a FLC licence posted behind the driver's seat in the vehicle, which had expired on February 10, 2018. When asked by the Team about the wage rate notice, Mr. Brar responded that he thought all of the required postings were there.
15. On May 31, 2018, the Delegate sent DLC a letter regarding the Team's observations during the Inspection and provided DLC an opportunity to respond to why DLC failed to display a valid FLC license in vehicle MH0717 as required by section 6(1)(a) of the *Regulation*.
16. On June 18, 2018, on behalf of DLC, Mr. Dhillon sent a "TO WHOM IT MAY CONCERN" type-written letter to the Director advising that he "had posted a copy of new licence over the older licence which had fallen off in the vehicle itself". He also submitted a "TO WHOM IT MAY CONCERN" type-written letter from the driver of the vehicle, Mr. Brar, in which the latter purportedly writes that the valid FLC licence "had fallen off in the vehicle itself" and he "found the paper lying under a seat later". While I am not making any determination on the authenticity of the letter from Mr. Brar (and neither did the Delegate), I simply make an observation that the letter purportedly signed by Mr. Brar is written in similar form and and style as Mr. Dhillon's and the signatures are similar looking in terms of handwriting.
17. On June 19, 2018, the delegate had a telephone conversation with Mr. Dhillon on the matter of the wage rate notice, which the delegate confirms in his email of same date to Mr. Dhillon. The delegate's email notes that Mr. Dhillon informed him that he had written the wage rate on the copy of the FLC licence which had fallen under the seat in the vehicle.
18. Having received Mr. Dhillon's response to both DLC's failure to display a valid FLC licence and wage rate notice in vehicle MH0717, the Delegate notes in the Reasons that DLC has been a licensed FLC for many years and during its most recent licensing application process, Mr. Dhillon indicated awareness of the requirements of sections 6(1)(a) and 6(1)(d) of the *Regulation*. The Delegate then goes on to decide whether DLC contravened either or both sections of the *Regulation*.
19. In concluding that DLC contravened section 6(1)(a) of the *Regulation*, the Delegate reasons as follows:

Section 6(1)(a) of the Regulation states that a FLC must prominently display a copy of its licence on all vehicles used for transporting employees.

At the time of the roadside inspection on May 29, 2018, the Team observed that [DLC] did not have its valid FLC licence displayed anywhere on vehicle MH 0717. While Mr. Dhillon argued that [DLC's] valid licence had been posted but fell off, and the driver of vehicle MH 0717 provided a written statement well after the roadside inspection that he found the valid copy of [DLC's] FLC licence lying under a seat, it remains that the FLC licence was not displayed prominently on the vehicle at the time of the roadside inspection on May 29, 2018 when the vehicle was being used to transport workers. Even if I accept that [DLC's] valid FLC licence was lying under a seat, a FLC licence underneath a seat does not meet the requirement set by the Regulation to have it prominently displayed.

Accordingly, as there is no dispute that a copy of [DLC's] valid FLC licence was not displayed prominently on vehicle MH 0717 at the time of the roadside inspection on May 29, 2018 while

[DLC] was using the vehicle to transport workers, I find that [DLC] contravened Section 6(1)(a) of the Regulation on May 29, 2018.

20. In the result, the Delegate imposed a mandatory administrative penalty of \$500 against DLC for contravention of section 6(1)(a) of the *Regulation*.

21. With respect to section 6(1)(d) of the *Regulation*, the Delegate similarly concluded that DLC contravened this section. The Delegate reasons as follows:

Section 6(1)(d) of the Regulation states that a FLC must ‘display prominently....on all vehicles used by the [FLC] for transporting employees, the wages the [FLC] is paying to employees’.

There is no dispute that, as of the time of the roadside inspection on May 29, 2018, [DLC’s] vehicle MH 0717 did not have a wage rate notice prominently displayed. While Mr. Dhillon argued that the wage rate was written on [DLC’s] valid FLC licence which had fallen down and was later found under a seat by the driver, it remains that the wage rate notice was not prominently displayed on the vehicle at the time of the roadside inspection when [DLC] was using the vehicle to transport workers.

22. Accordingly, the delegate imposed a mandatory administrative penalty in the amount of \$500.00 against DLC for contravention section 6(1)(d) of the *Regulation*.

SUBMISSIONS OF DLC

23. Mr. Dhillon makes two sets of written submissions: one relating to DLC’s request for an extension of time to file its appeal and another relating to the merits of the appeal. With respect to the application to extend the time to appeal, I do not find it necessary to review the submissions for the reasons set out in the Analysis section below.

24. With respect to the merits of the appeal, Mr. Dhillon attaches his and Mr. Brar’s June 18, 2018, “TO WHOM IT MAY CONCERN” written statements with written submissions reiterating the response he previously provided to the Delegate when the Delegate requested DLC’s response regarding the Team’s Inspection findings pertaining to sections 6(1)(a) and (d) of the *Regulation* before the Determination was made. More particularly, Mr. Dhillon states:

[The Determination] does not seem fair to me as I think I had fulfilled my responsibility to post a copy of my new license and a wage rate handwritten on it![sic] My driver in his statement has testified about this. He says he didn’t know who the people questioning him were. He would have tried to find that fallen sheet if he was aware that they were from Employment Standards and what the consequences to that situation would be![sic] Also to my understanding, I have never done contradictions [sic] in this section ever since 2001.

Please consider my driver’s statement again and take [sic] a fair decision for me.

ANALYSIS

25. Section 112(1) of the *ESA* provides that a person may appeal the determination on 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.
26. The burden is on the appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds listed in section 112(1) above.
27. As indicated above, DLC's appeal is based on the "natural justice" ground of appeal in section 112(1)(b). Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; to present their evidence; and to be heard by an independent decision maker (see *Re: Imperial Limousine Service Ltd.*, BC EST # D014/05).
28. I find nothing in the appeal submissions of Ms. Dhillon that remotely suggest a breach of natural justice on the part of the Director in making the Determination. To the contrary, I am satisfied that DLC was afforded all procedural rights contemplated within the meaning of "natural justice". In particular, after the Team's Inspection, the Delegate, on May 31, 2018, issued DLC a letter which set out the Team's observations at the Inspection and invited DLC to respond with respect to DLC's failure to display its valid FLC license on vehicle MH0717. Mr. Dhillon responded to the delegate's query by way of a letter dated June 18, 2018 (as delineated in paragraph 16 above). The delegate also contacted Mr. Dhillon by telephone on June 19, 2018, and obtained DLC's response with respect to its failure to display a wage rate form on vehicle MH0717 (as indicated in paragraph 17 above).
29. I find that DLC was not only afforded an opportunity to know the case against it but DLC was provided an opportunity to respond and did respond to the case against it. There is also no allegation of or any evidence of bias on the part of the Director in making the Determination. Therefore, I do not find there to be any basis, under the natural justice ground of appeal, to interfere with the Determination and I dismiss the natural justice ground of appeal.
30. Having said this, I have also considered the error of law ground of appeal, although not advanced by DLC in its appeal. In *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, [1998] B.C.J. No. 2275, the BC Court of Appeal defines error of law inclusively as follows:
1. a misinterpretation and or misapplication of a section of the *Act* [in *Gemex*, the legislation was the *Assessment Act*];
 2. a misapplication of an applicable principle of general law;
 3. acting without any evidence;
 4. acting on a view of the facts which could not reasonably be entertained; and
 5. adopting a method of assessment which is wrong in principle.

31. As with the natural justice ground of appeal, I do not find any evidence of an error of law (particularly as defined in *Gemex, supra*). On the contrary, I find that the Delegate not only correctly interpreted and applied sections 6(1)(a) and 6(1)(d) of the *Regulation* but there is sufficient evidence in this case including in DLC's own submissions to support the conclusions the Delegate reached in the Determination. I do not find anything in Mr. Dhillon's appeal submissions that would convince me otherwise. I note that Mr. Dhillon's "TO WHOM IT MAY CONCERN" written statement of June 18, 2018, as supported by Mr. Brar's statement of same date indicating that the valid FLC licence had fallen off and later found under the seat of vehicle MH0717, even if accepted, does not mitigate DLC's obligation under sections 6(1)(a) and (d) of the *Regulation* to "display prominently" on all vehicles it uses its FLC license and a wage rate notice. I find the Delegate's analysis and conclusions relating to both findings of contraventions in this case amply supported in evidence and I would not interfere with those findings and conclusions.
32. I also find that this is a case of a dissatisfied party taking the proverbial "second kick at the can" before a different panel with a view to having a favourable outcome. This is neither an appropriate purpose of an appeal, nor does it advance the stated objective of the *ESA* in section 2(d), namely, to provide fair and efficient procedures for resolving disputes over the application and interpretation of the *ESA*.
33. In the result, I find that there is no reasonable prospect that this appeal can succeed and I dismiss it.

ORDER

34. Pursuant to section 115 of the *ESA*, I confirm the Determination issued on June 22, 2018, and I dismiss this appeal pursuant to section 114(1)(f) of the *ESA*.

Shafik Bhalloo
Member
Employment Standards Tribunal