

Citation: Qualified Contractors Ltd. (Re)
2020 BCEST 73

An appeal

- by -

Qualified Contractors Ltd.
(the “Appellant”)

- 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: James F. Maxwell

FILE No.: 2020/009

DATE OF DECISION: June 18, 2020

DECISION

SUBMISSIONS

Gurminder Shoker

on behalf of Qualified Contractors Ltd.

OVERVIEW

1. Qualified Contractors Ltd. (“the “Appellant””) is a licensed farm labour contractor, pursuant to section 13 of the *Employment Standards Act* (the “ESA”).
2. In the course of its business as a farm labour contractor, the Appellant transports farm workers to worksites. On August 31, 2019, a vehicle used by the Appellant to transport workers (the “Vehicle”) was involved in a single vehicle accident (the “Accident”). As a result of the Accident, WorkSafeBC undertook an investigation, and issued Orders pursuant to the *Occupational Health and Safety Regulation* and the *Workers Compensation Act*, requiring the Appellant to stop using the Vehicle.
3. A delegate of the Director of Employment Standards (the “Director”) undertook an investigation into the circumstances surrounding the accident, and issued a determination (the “Determination”) pursuant to the *ESA* in which the Director ordered that the farm labour contractor license issued to the Appellant be suspended for the period December 15, 2019, to January 11, 2020.
4. On January 13, 2020, the Appellant filed an appeal of the Determination.
5. In its appeal, the Appellant alleged that the Director failed to observe the principles of natural justice in making the Determination.
6. Having reviewed the Determination, the Appellant’s appeal submissions, and the record of proceedings provided by the Director, I conclude that this appeal must be dismissed and, pursuant to section 115 of the *ESA*, the Determination confirmed. My reasons follow.

ISSUE

7. The issue to be determined in this matter is whether the Director failed to observe the principles of natural justice in issuing the Determination.

FACTS

8. The Appellant is a corporation that operates as a farm labour contractor and holds a license for that purpose issued pursuant to section 13 of the *ESA*.
9. On August 31, 2019, the Vehicle, a 2006 Yellow International Bus, was being operated by or for the Appellant to transport farm workers to a worksite when it was involved in the Accident.
10. Following the Accident, WorkSafeBC undertook an investigation of the Accident, and on September 6, 2019, issued an Inspection Report. The Inspection Report found that the rear brakes on the vehicle were

not functioning, and the left side emergency door exit had been bolted shut. WorkSafeBC concluded that these matters constituted a violation of section 17.1.1 of the *Occupational Health and Safety Regulation*. Based upon this violation, WorkSafeBC issued an Order, pursuant to section 190(1) of the *Workers Compensation Act*, requiring that the Appellant immediately stop use of the Vehicle until such time as it had satisfied WorkSafeBC that the Vehicle was safe and in compliance with the provisions of the *Workers Compensation Act*.

11. Following the issuance of the Order by WorkSafeBC, the Director commenced an investigation. The Director requested that the Appellant produce all records related to the Appellant's employees who were being transported in the Vehicle on the day of the Accident, for the purpose of reviewing compliance with the *ESA*. The Director also requested that the Appellant provide all documents issued following the Accident by the RCMP, WorkSafeBC, and British Columbia Commercial Vehicle Safety and Enforcement.
12. As a result of its investigation, the Director reached a preliminary assessment that the Appellant's farm labour contractor licence should be suspended or cancelled as a result of the issuance, by WorkSafeBC, of an Order pursuant to the provisions of the *Occupational Health and Safety Regulation* and the *Workers Compensation Act*. The Director afforded the Appellant the opportunity to comment on the preliminary assessment.
13. On December 4, 2019, the Director issued the Determination which gives rise to the present appeal. The Director noted that section 7 of the *Employment Standards Regulation* provides that the Director may cancel or suspend a farm labour contractor licence in certain circumstances, including:
 - 7 The director may refuse to issue a licence to a farm labour contractor, refuse to renew or reinstate a farm labour contractor's licence or cancel or suspend a farm labour contractor's licence in any of the following circumstances:
 - ...
 - (f) the Workers' Compensation Board has, under the *Workers Compensation Act*, taken an enforcement action described in one or both of subparagraphs (i) and (ii) against the farm labour contractor with respect to transportation, by the farm labour contractor, of employees of the farm labour contractor, another farm labour contractor or a producer:
 - (i) issued an order under section 187 of the *Workers Compensation Act* to comply with section 115 of that Act or section 4.1 or 4.3 or Part 17 of the *Occupational Health and Safety Regulation*;
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14. The Director found that WorkSafeBC (the Workers' Compensation Board) had issued an order pursuant to Part 17 of the *Occupational Health and Safety Regulation*, and that this constituted an enforcement action as defined in s. 7 of the *Employment Standards Regulation*. The Director ordered that the Appellant's farm labour contractor licence be suspended from December 15, 2019, to January 11, 2020.
15. On January 13, 2020, the Appellant filed the within appeal of the Determination with the Tribunal.

ANALYSIS

16. Section 112(1) of the *ESA* provides that a person may appeal a Determination 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.
17. The burden is on an Appellant to persuade this Tribunal that there is justification to interfere with a Determination on any of these statutory grounds.
18. In the present case, the Appellant contends that the Director failed to observe the principles of natural justice in making the Determination.

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

19. The Appellant tendered submissions with its appeal. In summary, the Appellant's submissions argue that:
- (a) On the day of the Accident, the Vehicle's rear brakes stopped working, and the operator was unable to stop the vehicle. The operator directed the Vehicle into a ditch, where the Vehicle rolled over;
 - (b) WorkSafeBC did issue an Order requiring the Appellant to stop using the Vehicle, and this Order was subsequently closed;
 - (c) The Appellant and the vehicle operator undertook regular inspections of the Vehicle, and all defects were promptly dealt with;
 - (d) The Accident was caused by a mechanical issue that could not have been prevented;
 - (e) The Appellant takes its safety obligations very seriously;
 - (f) The suspension of the farm labour contractor licence was very burdensome to the Appellant; and
 - (g) The Director failed to observe the principles of natural justice, as there was "no substance to any of the claims outlined". The Director did not inquire as to the Appellant's safety procedures and protocols and had no details of the Accident other than information available in the media.
20. Much of the argument presented by the Appellant is an attempt to re-argue its case before this Tribunal. As the Tribunal has said on many occasions, an appeal is not an opportunity to re-argue a case. The onus is on the Appellant to show that the Director breached the principles of natural justice in making the Determination.

21. In *Imperial Limousine Service Ltd.*, BC EST # D014/05, the Tribunal addressed the principles of natural justice that must be addressed by administrative bodies, as follows:
- Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; the right to present their evidence; and the right to be heard by an independent decision maker. It has been previously held by the Tribunal that the Director and her delegates are acting in a quasi-judicial capacity when they conduct investigations into complaints filed under the Act, and their functions must therefore be performed in an unbiased and neutral fashion. Procedural fairness must be accorded to the parties, and they must be given the opportunity to respond to the evidence and arguments presented by an adverse party. (see *BWI Business World Incorporated* BC EST # D050/96)
22. I do not find anything in the Appellant's submissions or in the Director's record that supports the argument that the Director failed to apply the principles of natural justice in reaching the Determination. I find that the Director undertook an investigation into the circumstances following the Accident. The Director afforded sufficient opportunities to the Appellant to submit its records, and to respond to the Director's preliminary assessment. The Director carefully weighed all of the information gathered and applied the relevant legislative provisions.
23. The Appellant has presented no convincing evidence in support of its allegations that the Director failed to apply the principles of natural justice. On the contrary, I am satisfied that the Director observed the principles of natural justice in conducting the investigation, and in evaluating the information provided therein. For this reason, I dismiss this ground of appeal.

ORDER

24. I dismiss this appeal and, pursuant to section 115 of the *ESA*, confirm the Determination.

James F. Maxwell
Member
Employment Standards Tribunal