

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

High Power Nursery Ltd.

- of a Determination issued by -

The Director of Employment Standards

**PANEL:** Richard Grounds

**FILE NO.:** 2022/183

**DATE OF DECISION:** January 20, 2023

## DECISION

### SUBMISSIONS

Santokh Kohar

on behalf of High Power Nursery Ltd.

### OVERVIEW

1. This is an appeal by High Power Nursery Ltd. (the “Appellant”) of a determination issued by Courtney Milburn, a delegate (the “Delegate”) of the Director of Employment Standards (the “Director”), dated August 11, 2022 (the “Determination”). The Appellant appeals the Determination pursuant to section 112(1) of the *Employment Standards Act* (the “ESA”).
2. In the Determination, the Delegate concluded that the Appellant had contravened section 6(1)(f) of the *Employment Standards Regulation* (the “Regulation”) by failing to file with the Director copies of up-to-date vehicle registrations and inspection certificates.
3. The Appellant submits that the Director erred in law in making the Determination.
4. I have considered the Determination, the reasons for the Determination, the Appellant’s appeal submission and the ESA section 115 record (the “record”). Submissions were not requested from the Delegate.

### THE INVESTIGATION AND DETERMINATION

5. The Appellant was issued a farm labour contractor license on January 3, 2021. As part of the licensing requirements, the Appellant was required to comply with duties of farm labour contractors under section 6 of the *Regulation*.
6. On May 2, 2022, an inter-agency operation, comprised of the Employment Standards Branch (the “Branch”), WorkSafe BC and Commercial Vehicles Safety and Enforcement conducted a roadside inspection of a vehicle owned by the Appellant. At the time of this inspection, a review of the Branch database confirmed that the Director was not in receipt of a current and valid registration number, licence number and Motor Vehicle Inspection Report for the vehicle.
7. The record confirms that an investigating delegate provided the Appellant with a preliminary assessment that it may have contravened section 6(1)(f) of the *Regulation* which states that a farm labour contractor must file with the Director:
  - (i) an up-to-date list of the registration numbers and licence numbers of each vehicle used by the farm labour contractor for transporting employees, and
  - (ii) if the vehicle is owned by the farm labour contractor, copies of the inspection certificate and other records that must be maintained under section 25 of the Motor Vehicle Act Regulations.

8. The Appellant responded to the preliminary assessment on June 6, 2022, and provided copies of the current vehicle registration dated May 1, 2022, and the inspection certificate dated January 31, 2022, but did not provide any submissions in response to the alleged contravention. The investigating delegate informed the Appellant that the records were not on file with the Branch at the time of the roadside inspection.
9. The Delegate was assigned to decide the complaint and she issued the Determination dated August 11, 2022. In the Determination, the Delegate found that the Appellant had contravened section 6(1)(f) of the *Regulation* when the Appellant operated a vehicle and the registration number, license number and inspection report were not on file with the Director.
10. The Delegate assessed a mandatory escalated \$10,000.00 administrative penalty because this was the Appellant's third contravention of section 6(1)(f) of the *Regulation*.

### **ARGUMENTS**

11. The Appellant appeals the Determination on the basis that the Director erred in law. The Appellant submits that section 6(1)(f) of the *Regulation* is not associated with the purpose of the *ESA* as set out in section 2.
12. The Appellant submits that the Branch originally explained to farm labour contractors that, once provided to the Branch, updated vehicle registration documents were only required if there was a change in the licence plate of the vehicle. The Appellant submits that this "internal policy" appears to have changed such that updated registrations are required "the minute the vehicle insurance is renewed", which is neither feasible nor consistent with the purposes of the *ESA*.
13. The Appellant submits that the Delegate erred because section 6(1)(f) only requires that an up to date list of registration number and licence number of each vehicle be provided, not copies of the actual registration. The Appellant submits that it provided this information the previous year, on April 30, 2021, and this information had not changed at the time of the inspection on May 2, 2022. The Appellant submits that it acted diligently by providing the Director with the renewed registration on May 2, 2022, the day after it took effect on May 1, 2022.
14. The Appellant provided copies of fax transmission verification reports dated April 30, 2021, at 9:25 am and May 2, 2022, at 11:50 am. The Appellant submits that the record for the appeal should include the vehicle registration that it faxed to the Branch on May 2, 2022.

### **ANALYSIS**

15. The Appellant's submission that section 6(1)(f) of the *Regulation* is not associated with the purpose of the *ESA* as set out in section 2 is of no assistance to its appeal. The *ESA* and the *Regulation* specifically set out requirements for farm labour contractors, which the Appellant is obligated to follow as a condition of its farm labour contractor license.
16. The Appellant's submission that the Branch told farm labour contractors that they only needed to submit new vehicle registration documents if there was a change in the licence plate is not supported by any

evidence and the Appellant could have raised this issue during the investigation or in response to the preliminary assessment but did not do so. Accordingly, it would not meet the first criterion to admit new evidence on appeal, as outlined in Tribunal in *Bruce Davies et al.* (BC EST # D171/03).<sup>1</sup>

17. The Appellant's submission that it is not feasible to immediately provide the updated vehicle registration to the Branch has no merit in these circumstances. According to the ICBC Owner's Certificate of Insurance and Vehicle Licence provided by the Appellant in response to the preliminary assessment,<sup>2</sup> it was obtained on May 1, 2022, at 11:43:20. According to the fax transmission verification report, the Appellant did not fax it to the Branch until May 2, 2022, at 11:50 am, more than 24 hours later.
18. According to the preliminary assessment, the Appellant's vehicle was inspected at the roadside inspection on May 2, 2022, at 8:00 am.<sup>3</sup> A check of the Branch database at that time confirmed that the Appellant had not provided the current vehicle registration and inspection report. This is consistent with the fact that the Appellant did not fax the vehicle registration to the Branch until later in the morning on May 2, 2022. The Appellant did not provide any submissions in response to the preliminary assessment or on appeal to address why it did not provide the required information to the Branch on May 1, 2022.
19. The Appellant's submission that the record should include the information it faxed to the Branch on May 2, 2022, is not material to the appeal because the evidence clearly establishes that the information had not been provided to the Branch before the vehicle was inspected in the early morning on May 2, 2022. This is consistent with what was found in the investigation and in the Determination.
20. The Appellant submits that section 6(1)(f) of the *Regulation* only requires that an up to date list of registration number and licence number of each vehicle be provided, not copies of the actual registration. In addition, the Appellant submits that it provided the required information the previous year and nothing had changed at the time of the vehicle inspection on May 2, 2022.
21. The Appellant's submission is not persuasive because the wording of the *Regulation* is that an "up-to-date list of the registration numbers and licence numbers of each vehicle used by the farm labour contractor for transporting employees" must be filed with the Director. The wording "up-to-date" is reasonably interpreted to mean in force and once the vehicle registration expires, in this case the registration the Director had on file at the time of the vehicle inspection showed an expiry date of April 30, 2022, it would no longer be considered to be up to date. It would be illogical to interpret the requirement in 6(1)(f)(i) to mean that the information only had to be provided one time, without further proof that the vehicle registration and licence remains in force.
22. The *Regulation* also required the Appellant to provide "copies of the inspection certificate and other records that must be maintained under section 25 of the Motor Vehicle Act Regulations". The inspection report for the Appellant's vehicle was completed on January 31, 2022, but the Appellant did not provide

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<sup>1</sup> The first criterion to meet is that the evidence could not, with the exercise of due diligence, have been discovered and presented to the Director during the investigation or adjudication of the complaint and prior to the Determination being made.

<sup>2</sup> Found at page 71 of the Record.

<sup>3</sup> Found at page 81 of the Record.

this to the Branch until after the roadside inspection on May 2, 2022.<sup>4</sup> The Appellant did not provide any submissions in response to the preliminary assessment or on appeal to explain why it did not provide the vehicle inspection report to the Branch in a timely manner after it was completed on January 31, 2022.

23. The Appellant submits that the Delegate erred in law in making the Determination. The Tribunal has adopted the following definition of an error in law set out in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 - Coquitlam)*, [1998] B.C.J. No 2275 (C.A.):

1. a misinterpretation 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.

24. The Delegate properly applied the *ESA* and *Regulation* and reached a conclusion that was supported by the evidence. There is no reasonable basis to find that the Delegate engaged in any of the acts outlined in *Gemex, supra*. I am satisfied that the Delegate did not commit an error of law when she concluded that the Appellant contravened section 6(1)(f) of the *Regulation*.

## ORDER

25. The Appellant's appeal is dismissed, and the Determination is confirmed under section 115(1)(a) of the *ESA*.

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**Richard Grounds**  
**Member**  
**Employment Standards Tribunal**

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<sup>4</sup> This Commercial Vehicle Inspection Report, found at page 72 of the Record, was provided to the Branch in response to the preliminary assessment but it is unclear if it was included with the Appellant's May 2, 2022 fax where the vehicle registration and licence were provided to the Branch. It is not material to the outcome if it was included with the May 2, 2022 fax because this was after the roadside inspection that had occurred earlier that morning.