

An appeal

- by -

Dhillon Labour Contractors Ltd.
(“Dhillon Labour”)

- 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 (as amended)

TRIBUNAL MEMBER: David B. Stevenson

FILE No.: 2009A/147

DATE OF DECISION: January 5, 2010

DECISION

SUBMISSIONS

Dalbir S. Dhillon on behalf of Dhillon Labour Contractors Ltd.
Ravi Sandhu on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Dhillon Labour Contractors Ltd. (“Dhillon Labour”) of a Determination that was issued on September 26, 2009 by a delegate of the Director of Employment Standards (the “Director”). The Determination found that Dhillon Labour had contravened Section 6.1 of the *Employment Standards Regulation* (the “*Regulation*”) and imposed an administrative penalty on Dhillon Labour under Section 29(1) of the *Regulation* in the amount of \$500.00.
2. Dhillon Labour has filed an appeal of the Determination, alleging the Director erred in law and failed to observe principles of natural justice in making the Determination. Dhillon Labour also has indicated there is new evidence available that was not available when the Determination was made.
3. This appeal can be decided without an oral hearing from the material in the appeal file, including the written submissions of the parties.

ISSUE

4. The issue here is whether Dhillon Labour has shown an error in the Determination on one of the statutory grounds in section 112 of the *Act*.

THE FACTS

5. The facts, as set out in the Determination, can be summarized as follows:
 - On August 27, 2009, the Employment Standards Branch Agricultural Compliance Team (the “Team”) conducted a worksite visit of Sumas Valley Blueberry Farms Ltd. (“Sumas”).
 - Dhillon Labour was providing contract labour to that worksite for Sumas.
 - The Team inspected a vehicle on the worksite that was being used by Dhillon Farms to transport employees.
 - The inspection of the vehicle did not find the notice required under section 6.1(a) of the *Regulation* posted in the vehicle, as required by section 6.1(b) of the *Regulation*.
 - On September 1, 2009, the Director provided Dhillon Labour with a letter setting out the Team’s observations and allowed Dhillon Labour an opportunity to respond to those observations.
 - On September 17, 2009, Dalbir Dhillon, on behalf of Dhillon Labour, delivered a response to the Director.

- The response indicated the observations of the Team must have been wrong, because Mr. Dhillon – sometime after the worksite visit – saw the required notice in the vehicle and was told by the driver of the vehicle that the required notice was posted in the vehicle at the time of the inspection.
- The assertions in the response were not accepted and the Determination at issue in this appeal was issued.

ANALYSIS

6. As a result of amendments to the *Act* which came into effect on November 29, 2002, the grounds of appeal are statutorily limited to those found in Subsection 112(1) of the *Act*, which says:

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 made.*
7. The Tribunal has consistently indicated that the burden in an appeal is on the appellant to persuade the Tribunal there is an error in the Determination under one of the statutory grounds. A party alleging a denial of natural justice must provide some evidence in support of that allegation: see *Dusty Investments Inc. dba Honda North*, BC EST # D043/99.
8. The *Act* does not provide for an appeal based on errors of fact and the Tribunal has no authority to consider appeals based on alleged errors in findings of fact unless such findings raise an error of law: see *Britco Structures Ltd.*, BC EST # D260/03.
9. Dhillon Labour indicates on the appeal form that there is evidence available that was not available when the Determination was made. There is, however, no new “evidence” provided with the appeal. Dhillon Labour has provided additional information in the appeal relating to the circumstances of the vehicle inspection by the Team, but that is all. Even if this information could be considered “evidence”, it was available and could have been provided to the Director in response to the September 1, 2009 letter. There is no explanation in the appeal submission why it was not given to the Director. The availability of the information and the failure to provide it to the Director before the Determination was issued are sufficient reasons for not accepting that information in this appeal. Additionally, I would not consider this “evidence” to be either credible, in the sense that it is reasonably capable of belief, or probative, in the sense of being capable of resulting in a different conclusion than what is found in the Determination.
10. In any event, the so-called new “evidence” only challenges findings of fact made by the Director in the Determination. As indicated above, the Tribunal has no authority to consider appeals that simply challenge findings of fact. In this case, the Director found as a fact that there was no notice posted in the vehicle; Dhillon Labour disagrees with that finding. That kind of disagreement with the Determination does not fall within any of the grounds of appeal found in subsection 112(1).
11. In respect of the other grounds raised, the appeal does not identify how the Director erred in law or failed to observe principles of natural justice in making the Determination and none is apparent in the appeal

submission or in the material in the file. In the absence of some substantive basis for these grounds of appeal, the burden on Dhillon Labour in this appeal is not met and, consequently, the appeal is dismissed.

ORDER

12. Pursuant to section 115 of the *Act*, I confirm the Determination dated September 26, 2009.

David B. Stevenson
Member
Employment Standards Tribunal