

An appeal

- by -

LS Labour Solutions Inc.

- 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:** Robert Groves

**FILE No.:** 2006A/117

**DATE OF DECISION:** January 15, 2007

## DECISION

### OVERVIEW

1. This is an appeal by LS Labour Solutions Inc. ("LS") pursuant to Section 112 of the *Employment Standards Act* (the "*Act*") against a determination (the "Determination") issued by a delegate of the Director of Employment Standards (the "Delegate") on August 28, 2006.
2. In the Determination, the Delegate found that LS, a farm contractor licensed under the *Act*, had failed to keep a daily log at a work site, thereby contravening Section 6 of the *Employment Standards Regulation* (the "*Regulation*"). As LS had previously been found to have contravened Section 6 within the time period stipulated in Section 29(1)(b) of the *Regulation*, the Delegate ordered that LS pay an administrative penalty of \$2,500.00.
3. The relevant materials I have before me are the LS Appeal Form filed October 5, 2006, the Determination and the Delegate's Reasons, a written submission from LS dated October 23, 2006 attaching a statement of one Darshan Singh Sidhu ("Mr. Sidhu"), and a letter submission dated November 10, 2006 from the Delegate attaching the record that was before him at the time the Determination was made.
4. The Tribunal has decided that I will determine the appeal based on the written submissions received from the parties.

### FACTS

5. On July 27, 2006 the Employment Standards Branch Agricultural Compliance Team (the "Team") conducted a site visit at Sidhu Farms, a property owned by Mr. Sidhu, in Abbotsford, British Columbia. The purpose of the visit was to ensure that the labour contractors providing workers at the site were acting in compliance with the *Act*. LS was one of the licensed labour contractors providing contract labour to Sidhu Farms at that property on that day for the purpose of harvesting blueberries.
6. Section 6(4) of the *Regulation* says this:
  - (4) *A farm labour contractor must keep at the work site and make available for inspection by the director a daily log that includes*
    - (a) *the name of the worker,*
    - (b) *the name of the employer and work site location to which workers are supplied and the names of the workers who work on that work site on that day,*
    - (c) *the dates worked by each worker,*
    - (d) *the fruit, vegetable, berry or flower crop picked in each day by each worker, and*
    - (e) *the volume or weight picked in each day by each worker.*

7. Upon arrival at the Sidhu Farms work site, a member of the Team interviewed Kamaljit Sidhu, Mr. Sidhu's son, for the purpose of explaining to him the reason for the Team's visit, and to co-ordinate the Team's access to the site in order that it might conduct its investigation. Kamaljit Sidhu did not identify LS as one of the contractors on site, but the Team soon learned from interviews of the contract labourers harvesting the blueberries on the property that some of them were employees of LS. There is no issue taken by LS that it supplied contract labour to Sidhu Farms on that day.
8. At the time of the Team's visit there was no LS management person present on site. During the course of their interviews with the LS employees the members of the Team learned that the driver for LS had dropped them at the farm, and then left. There were ten employees of LS working at the site that day. The Delegate's Reasons state that all of them were interviewed by the Team and asked for the daily log it was LS' obligation to make available for inspection. None of the employees produced the log, and no log was made available to the Team during the visit.
9. On August 1, 2006, the Delegate wrote to LS requesting an explanation for its failure to make the log available as required. The LS President, Gurdev Gill, replied by letter dated August 10, 2006 in which he stated, among other things, the following:
  - The "timesheets" were always left on site with an employee;
  - On the day of the visit Mr. Gill was running late and left the "timesheet" with Mr. Sidhu;
  - While Mr. Sidhu was present on the site on the day in question, he was unaware that the Team was making a visit because he was at the other end of the property at the relevant time;
  - The Team did not ask Mr. Sidhu, or his son, for the log. Nor did the Team attempt to contact LS. The Team only made requests for the log from the LS employees on site. If a member of the Team had contacted LS the member would have been informed that Mr. Sidhu had the log on site, and it would have been made available.
10. In his Reasons the Delegate rejected Mr. Gill's submission, stating that the legislation does not require the Team to ask a farm owner or manager for records, or to contact the contractor if the log is not available for inspection. Relying on a previous decision of mine in *Dhillon Labour Contractors Ltd.* BC EST #D005/06, the Delegate took the position that it was LS' responsibility to make the log available for inspection – it was not the Team's responsibility to seek it out – and having chosen Mr. Sidhu to be the custodian of the log, LS must bear the responsibility for the contravention of the *Regulation* when the log was not produced when requested.

## ISSUES

11. Can it be said that LS' appeal should succeed for any of the reasons set out in Section 112 of the *Act*, that is:
  - the Delegate erred in law;
  - the Delegate failed to observe the principles of natural justice in making the Determination;
  - evidence has become available that was not available at the time the Determination was being made.

## ANALYSIS

12. On its Appeal Form, LS checks boxes stating as its grounds of appeal that, first, the Delegate erred in law, and second, failed to observe the principles of natural justice in making the Determination.
13. I will deal first with the assertion that the Delegate failed to observe the principles of natural justice. In general, such a challenge gives voice to a procedural concern that the proceedings before the Delegate were in some manner conducted unfairly, resulting in an appellant's either not having an opportunity to know the case it was required to meet, or an opportunity to be heard in its own defence.
14. In the context of proceedings under the *Act*, the obligation to observe the principles of natural justice is informed by the language of section 77, which reads:
77. If an investigation is conducted, the director must make reasonable efforts to give a person under investigation an opportunity to respond.
15. My review of the written materials filed by both parties on this appeal has persuaded me that LS has failed to show that it was denied an opportunity to know the case being alleged against it, or a reasonable opportunity to respond in its own defence. The Delegate made it abundantly clear from the beginning of his investigation that the issue was LS' alleged failure to make the log available at the time of the site visit. All of LS' submissions address this issue. LS nowhere suggests there was material it should have seen, or facts the Delegate considered of which LS was unaware, on which the Delegate relied in making his Determination.
16. The real substance of the LS appeal is that the Delegate erred in law in deciding that it had failed to comply with section 6(4) of the *Regulation*, given that the daily log was on site and would have been made available for inspection if only the Team had asked Mr. Sidhu for it, or contacted LS about it, when the Team made its visit. In support of its position, LS refers in its submission to a Memorandum of Understanding Factsheet regarding Compliance Team visits issued by the Employment Standards Branch in cooperation with the BC Agriculture Council and its member organizations. That document says, in part:
- While members of the team are interviewing employees, one member from the team will attempt to contact the farm labour contractors and their drivers to ensure that contractors are licensed and following the requirements of their license.
- A team member will ask the farm owner or manager to produce certain records. Information from an employer's records will not be revealed to unauthorized persons.
17. In my opinion, the Factsheet is of limited assistance to LS on this appeal because it says, on its face, that it is intended for general information purposes, and is not a legal document. The Factsheet also points out, correctly, that readers should refer to the *Act* and *Regulation* for the purposes of interpretation and the application of the law. The legislation nowhere makes it a precondition for a determination that section 6(4) of the *Regulation* has been contravened that a Team making a site visit must contact the contractor or the farm owner in order to gain access to the log. Section 6(4) imposes obligations on the contractor, not the Team. The section says two things. First, the contractor must "keep" the log at the work site. Second, the contractor must make the log "available for inspection".

18. Here, LS kept the log at the work site, but it did not, in my view, make it available for inspection. The reasons for this are contained in the statement of Mr. Sidhu, which LS attached to its written submission. One might say that this statement is evidence which should have been provided to the Delegate prior to his making the Determination, but the Delegate makes no objection to my considering it for the first time on this appeal, which is perhaps not surprising as it tends, in my opinion, to support my conclusion that the appeal must fail, and not that it should succeed.
19. Mr. Sidhu's statement says that on the day of the visit Mr. Gill met him on his way out of the field after delivering his labourers to the site and told him that he had forgotten to give his employee, Parmajit Kaur Sandhu, the "timesheet". Mr. Gill then gave the "timesheet" to Mr. Sidhu to deliver to Parmajit Kaur Sandhu. Mr. Sidhu said he would do that, but in the event Mr. Sidhu forgot to deliver the "timesheet" to Parmajit Kaur Sandhu and continued to have it in his possession at the time of the Team's visit. Mr. Gill confirmed in his submission that Parmajit Kaur Sandhu was the employee who was the regular custodian of the "timesheet". The Delegate's submission confirms that the Team interviewed Parmajit Kaur Sandhu during the visit, but of course she was not in a position to make a log available, as, unbeknownst to her, Mr. Sidhu was in possession of it.
20. Mr. Sidhu's statement further says that Kamaljit Sidhu was his representative in the field when he was attending to matters elsewhere, as was the case when the Team made its visit to Sidhu Farms on July 27, 2006. However, Kamaljit Sidhu was not aware who the labour contractors were who were supplying labour that day, nor was he aware that his father was in possession of the LS daily log, or "timesheet". He was not, therefore, in a position to direct the Team to his father for access to the log when the Team arrived and requested his cooperation to interview the labourers on the site.
21. It has been emphasized in previous decisions of the Tribunal that the daily log is an important tool for ensuring that workers employed as contract labour in the agricultural sector receive the benefit of the minimum standards contained in the *Act*. If the Agricultural Compliance Team cannot gain access to the contractor's daily log, that legislative goal is undermined (see *BSA Enterprises Ltd.* BCEST #D098/04). It is for this reason that section 6(4) places the onus on the contractor to ensure that the daily log is made available for inspection when a site visit occurs.
22. In this instance, the log was not made available to the Team because Mr. Sidhu did not deliver it to Parmajit Kaur Sandhu as he assured Mr. Gill he would. It is probable that if Parmajit Kaur Sandhu had been in possession of the log as planned, she would have produced it to the Team when she was asked for it. I accept that this failure on Mr. Sidhu's part was probably inadvertent, but section 6(4) establishes that the onus was on LS to ensure that the log was made available at the time of the visit. The failure to ensure that it was means that the Delegate did not err in law in determining, on the facts presented, that LS had contravened the section.
23. For these reasons, the LS appeal must fail.

**ORDER**

24. Pursuant to Section 115(1)(a) of the *Act*, I order that the Determination be confirmed.

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**Robert Groves**  
**Member**  
**Employment Standards Tribunal**