

An appeal

- by -

AM-PM Work Force Ltd.
(“AM-PM”)

- 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.: 2010A/173

DATE OF DECISION: January 18, 2011

DECISION

SUBMISSIONS

Tejinder Notey on behalf of AM-PM Work Force Ltd.
Ravi Sandhu on behalf of the Director of Employment Standards

OVERVIEW

1. This decision addresses an appeal filed under Section 112 of the *Employment Standards Act* (the “Act”) by AM-PM Work Force Ltd. (“AM-PM”) of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on October 14, 2010.
2. The Determination found that AM-PM had contravened section 6 of the *Employment Standards Regulation* (the “Regulation”) and ordered AM-PM to pay an administrative penalty under Section 29(1) of the *Regulation* in the amount of \$500.00.
3. The total amount of the Determination is \$500.00.
4. In this appeal, AM-PM says the Director failed to observe principles of natural justice in making the Determination and seeks to have the Determination cancelled.
5. The Tribunal has discretion whether to hold an oral hearing on an appeal. None of the parties has sought an oral hearing before the Tribunal and we have decided an oral hearing is not necessary in this case. The issues involved in this appeal can be decided from the submissions and the material on the section 112(5) Record.

ISSUE

6. The issue in this appeal is whether AM-PM has shown the Director failed to observe principles of natural justice in making the Determination.

THE FACTS

7. AM-PM is a licensed farm labour contractor under the *Act*. As part of the licensing process, AM-PM was provided with a study guide that included relevant provisions of the *Act* and *Regulation*, was required to pass a written examination demonstrating its knowledge of the *Act* and the *Regulation* and was taken through an interview checklist to ensure an understanding of their obligations under the *Act* and *Regulation*. AM-PM was licensed in 2010 and the license is set to expire on July 31, 2011.
8. On September 10, 2010, a vehicle operated by AM-PM was inspected during a roadside check. The inspection revealed the vehicle operated by AM-PM was not listed with the Director and no inspection certificate had been filed with the Director.
9. The Director determined these facts contravened the requirements of section 6(1)(f) of the *Regulation* and imposed an administrative penalty.

ARGUMENT AND ANALYSIS

10. 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.*
11. 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.
12. The Tribunal has authority under section 114 of the *Act* to dismiss an appeal that the Tribunal considers to be “frivolous, vexatious or trivial” or has “no reasonable prospect” of succeeding.
13. AM-PM has made no argument related to the ground of appeal – a failure by the Director to observe principles of natural justice in making the Determination. The sole basis for the appeal is that Ms. Notey, who I gather is the principal of AM-PM, “misunderstood” the filing requirements in section 6 of the *Regulation* and would like another chance. The same explanation was provided to the Director during the investigation process, considered by the Director before the Determination was issued and not accepted.
14. I consider this to be a frivolous appeal, which the Tribunal has described as an appeal in which “no justiciable question has been presented and which is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed”: see, for example, *Greg Brewer operating Smallbone Millwork & Design*, BC EST # D476/98.
15. AM-PM bears the onus of showing an error in the Determination. To have some prospect of meeting that onus it must submit some evidence or argument which challenges the material point in the Determination.
16. AM-PM has not made any submission nor given any evidence that might indicate the Director failed to observe principles of natural justice in making the Determination; nor has AM-PM shown there is any error in the rationale set out by the Director for the conclusion reached in the Determination.
17. This appeal is totally devoid of any merit and is dismissed under section 114 of the *Act*.
18. Even if I chose not to dismiss this appeal under section 114, AM-PM would not meet the onus under section 112 of demonstrating an error under any of the statutory grounds in section 112 of the *Act*.

ORDER

19. Pursuant to section 115 of the *Act*, I confirm the Determination dated October 14, 2010.

David B. Stevenson
Member
Employment Standards Tribunal