

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

- by -

Super Farm Contractors Ltd.  
("Super or farm labour contractor")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Paul E. Love

**FILE No:** 1999/491

**DATE OF DECISION:** January 12, 2000

## DECISION

### OVERVIEW

This is an appeal by Super Farms Contractors Ltd. (“farm labour contractor”) of a Determination dated July 15, 1999. The Agricultural Compliance Team attended at a farm in Abbotsford on July 12<sup>th</sup>, 1999, and determined, from interviewing the workers, that there was no daily log book on site setting out the names and numbers of the workers. The Delegate imposed a penalty of \$250.00. The farm labour contractor indicated that there was a daily log book in the van, and that the driver and the workers did not understand the questions asked by the Delegate.

### ISSUES TO BE DECIDED

Did the Delegate err in determining that the farm labour contractor failed to have on site a daily log book setting out the names of employees working on July 12<sup>th</sup>, 1999?

### FACTS

On July 12<sup>th</sup>, 1999 the Agricultural Compliance Team of the Director attended for a site visit at RSN Farms, located in Abbotsford, British Columbia. There were a number of employees who had been transported to the work site by the farm labour contractor and its driver, Jaswant Shergill. The driver was interviewed in the Punjabi and English languages and Mr. Shergill advised that he had commenced working for the farm labour contractor on July 8, 1999 and did not have a daily log.

The Delegate spoke with 18 employees on site. The inspection took place at about 11:55 am. In its appeal submissions, the farm labour contractor produced a daily log book which contained the names of 12 workers. The log book notes the “finish time” for the employees was 4:30 pm.

The Delegate determined that the farm labour contractor violated s. 6(4) of the *Employment Standards Regulation*, and assessed a \$250.00 penalty.

The farm labour contractor appealed and submitted that the driver had the log book in his possession at the relevant time and that the driver was not made to understand that he should produce the log book. The farm labour contractor says that the visiting team did not make any efforts to find the facts related to the Determination. The farm labour contractor alleges bias on the part of the investigator, and a false Determination.

The appeal submission prepared by the employer, did not contain any statement from the driver which would contradict the findings made by the Delegate.

**ANALYSIS**

Section 6(4) of the *Regulation* indicates as follows:

A farm labour contractor must keep at the work site and make available for inspection to the director a daily log that includes:

- a) the name of the employer and work site location to which workers are supplied
- b) the names of the workers who work on that site on that day

In an appeal under the *Act* it is necessary for the appellant to demonstrate an error in the Determination such that I ought to cancel or vary the Determination. In this case, the employer has not produced any evidence from any person with first hand knowledge of the facts on the date of the investigation. The log book adduced was clearly a log book which was created after the inspection, as it indicates that the workers worked until 4:30 pm, when the inspection occurred at 11:55 am. Whoever created the log book, was obviously mistaken as to the number of workers who worked on site, as the Delegate interviewed 18 workers on site and the log book reflects only 12 employees.

I do not accept the explanation advanced by the farm labour contractor. There was no proof of bias on the part of the Delegate, or a false Determination, as alleged. I am not satisfied that the Delegate erred in investigating this matter.

I note that this is the 3<sup>rd</sup> violation of s. 6(4) of the *Regulation*, and that no issue was raised by the farm labour contractor concerning the amount of the penalty imposed.

**ORDER**

Pursuant to section 115 of the *Act*, I confirm the Determination of the Delegate made July 15, 1999,.

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**Paul E. Love**  
**Adjudicator**  
**Employment Standards Tribunal**