

An appeal

- by -

Mohinder Multani carrying on business as K-P Labour Contractors
(the “Employer”)

- 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: Yuki Matsuno

FILE No.: 2007A/141

DATE OF DECISION: January 29, 2008

DECISION

SUBMISSIONS

Mohinder K. Multani

for the Employer

Karry Kainth

for the Director of Employment Standards

OVERVIEW AND BACKGROUND

1. The Employer, Mohinder Multani o/a K-P Labour Contractors, appeals a Determination of the Director of Employment Standards (the “Director”) issued August 24, 2007 (the “Determination”), pursuant to section 112 of the *Employment Standards Act* (the “Act”).
2. A delegate of the Director found in the Determination that the Employer had contravened section 6(4) of the *Employment Standards Regulation* (the “Regulation”) by failing to keep a daily log at the work site and make available for inspection.
3. The events that led to the Determination arose from a site visit made by the Employment Standards Branch Agricultural Compliance Team (the “Team”). The Team makes site visits to ensure that farm labour contractors such as the Employer are in compliance with the *Act* and *Regulation*. On June 26, 2007, the Team visited Bissett Farms, where the Employer was providing contract labour for harvesting strawberries. At the time of the Team’s visit, Mohinder Multani, the director of the Employer, was not present at the site. The Team proceeded to talk to the Employer’s workers on site, and asked them whether the Employer had left a daily log with them. None of the employees produced a daily log.
4. By letter dated June 27, 2007, a delegate of the Director sent a letter to Multani Enterprises Ltd. (“Multani”) outlining the Team’s visit to Bissett Farms on June 26 and alleging that Multani had provided contract labour to Bissett Farms for harvesting strawberries (the “June 27 letter”). The letter stated, “Multani appears to have contravened section 6(4) of the Employment Standards Regulation by failing to make a daily log available for inspection.” The letter went on to invite Multani to respond, should it disagree with these findings.
5. By letter dated July 13, 2007, the same delegate of the Director sent a letter to the Employer which was identical to the Multani letter, except that it named the Employer instead of Multani as the farm labour contractor that appeared to have contravened the Regulation by failing to make a daily log available for inspection (the “July 13 letter”). According to the letter, if the Employer disagreed with the findings contained in the letter, it had until July 23, 2007 to provide documents in support of its position.
6. Section 6(4) of the *Regulation* provides:
 6. (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 each 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. On July 24, 2007, the Employment Standards Branch (the “Branch”) received a letter dated July 23, 2007 from Kavel Singh Multani. It made the following points:

- On June 26, it was the Employer, not Multani, that was providing labour on the site;
- The Branch (presumably, the Team) asked for the Multani daily log, where it should have asked for the Employer’s daily log;
- The Employer’s daily log was on site at the time of the visit, but was not requested by the delegate of the Director (presumably the Team); and
- the daily log for June 26 was enclosed (a copy of the log was not included in the Record).

8. One month later, a delegate of the Director (the “Delegate”) issued the Determination, in which the Delegate:

- noted that the Branch sent the June 27 letter in error to the wrong farm labour contractor (i.e. Multani) and, after realizing the error, re-sent the letter to the Employer on July 13, 2007;
- found insufficient the Employer’s argument that the Employer’s daily log was available at the work site but never produced because the Team did not ask for it;
- found as facts that the Team asked every employee at the site if a daily log had been left with them (not specifically a Multani log or an Employer log); all the employees responded in the negative; and none produced a daily log for inspection;
- noted that the Employer was aware of the requirements of the *Act* and *Regulation*, given that it had been through the farm labour contractor licensing process;
- found that the Employer had breached section 6(4) of the *Regulation*; and
- imposed an administrative penalty on the Employer in the amount of \$10,000.00, as this was the Employer’s third contravention within three years.

9. The Employer now appeals the Determination on the ground that the Director, represented by the Delegate, failed to observe the principles of natural justice in making the Determination.

10. The Employer’s appeal was filed late. The task before me is to decide whether the Tribunal should exercise its discretion to extend the appeal period. As no issues of credibility arise, I will make this decision based on the written materials before me: the Employer’s appeal submission, the Director’s submission, the Determination, and the Record.

ISSUE

11. Should the Tribunal exercise its discretion under section 109(1)(b) to extend the appeal period in this case?

ARGUMENT AND ANALYSIS

12. In deciding whether to exercise my discretion to extend the appeal period under section 109(1)(b), I must be satisfied of the following:
- i) there is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
 - ii) there has been a genuine and on-going *bona fide* intention to appeal the Determination;
 - iii) the respondent party (*i.e.*, the employer or employee), as well as the Director, must have been made aware of this intention;
 - iv) the respondent party will not be unduly prejudiced by the granting of an extension; and
 - v) there is a strong *prima facie* case in favour of the appellant.
13. See *Niemesto*, BC EST #D099/96. These factors are not exhaustive.
14. The Tribunal will not grant extensions as a matter of course and will do so only where there are compelling reasons. The burden is on the appellant to show that the time period for an appeal should be extended: *Moen & Sagh Contracting Ltd.*, BC EST #D298/96.
15. The Determination indicates the deadline for appeal is October 1, 2007. The Employer's appeal was filed on November 9, 2007, almost six weeks later. The Employer explains that it appealed late because it had "requested several times", and had not yet received, a copy of the June 27 letter, which it wished to use in support of its appeal. The Employer does not indicate in its submission where it had submitted its request for the June 27 letter.
16. The Employer alleges in its appeal that the Director failed to observe the principles of natural justice in making the Determination. It puts forward the same argument that was acknowledged by the Delegate in the Determination, namely, that the Team only asked for the Multani daily log during the site visit on June 26, 2007. The Employer argues that "no one asked for KP Labour Contractor's daily log or "any daily log".
17. The Director makes the following arguments to support its view that the appeal period should not be extended:
- 1) There is no good reason why the Employer could not meet the appeal deadline. The Director says that as far as the Branch is concerned, the Employer never contacted the Branch to request a copy of the June 27 letter and would have been sent a copy had it made such a request. The Director also says that Mohinder Multani, the director of the Employer, paid a personal visit to the Branch in early or mid- November and suggested that she had tried to file an appeal earlier.
 - 2) There was an unreasonably long delay in filing the appeal after the appeal deadline. Even if the Employer had tried to file an appeal earlier, the Director says that the Employer could have made greater efforts to ensure the appeal was appropriately filed.

- 3) Both the Delegate and the Officer who wrote the Determination are uncertain regarding the Employer's intention to file an appeal.
- 4) The Employer does not have a strong enough case that might succeed if the Tribunal grants an extension. From the Delegate's point of view, it is clear that the Employer contravened the *Regulation* by not having a daily log present at the site and available for inspection.
18. Considering the submissions of the parties and the *Niemesto* factors, I find that the Employer has not met the burden of showing that the time period for an appeal should be extended in this case.
19. The Employer's reasons for filing the appeal late do not account for the almost 6-week delay between the appeal deadline date and the Employer submission date. There is no explanation of why the June 27 letter was needed for the appeal; further, the Employer ended up filing the appeal without the letter in any event. It is difficult to say from the materials whether the Employer had a genuine and ongoing *bona fide* intention to appeal the Determination or that the Director was aware of such an intention.
20. Most persuasive to my decision that the appeal period should not be extended is the lack of a strong *prima facie* case on the Employer's part. The Employer argues that the Director failed to observe the principles of natural justice in making the Determination because the Team allegedly asked only for the Multani daily log when it made the June 26 site visit. In the Determination, the Delegate made several findings of fact, one of them being that the daily log was not available on site for inspection. In making this finding of fact, the Delegate took into account the Employer's submission that the log was available at the site but not produced because the Team only asked for the Multani daily log.
21. The principles of natural justice include the right to know the case against oneself, to have an opportunity to respond, to have the matter decided by an unbiased decision maker, and to be given reasons for the decision. In the present case, there is no indication that these principles have not been followed. Instead of pointing to a breach of the principles of natural justice, the Employer's argument opposes the findings of fact made in the Determination, which are not appealable to the Tribunal in any event.
22. The Employer has no strong *prima facie* case and has provided no compelling reasons for extension. I decline to exercise my discretion to extend the appeal period.

ORDER

23. Pursuant to section 109(1)(b) of the Act, I deny the application to extend the appeal period.

Yuki Matsuno
Member
Employment Standards Tribunal