

BC EST #D 011/98

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 -

Sidson Farms Ltd.
("Sidson")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

Adjudicator: Paul E. Love

File No.: 97/841

Date of Decision: January 14, 1998

DECISION

OVERVIEW

This is an appeal by Sidson Farms Ltd. (“Sidson”), pursuant to section 112 of the *Employment Standards Act* (“*Act*”), from a penalty of \$500.00 imposed by the Director’s delegate in a Determination made November 12, 1997. An audit of the payroll records of Sidson, including “picking cards” was performed by the Director’s delegate. As a result of examining the picking cards, the Director’s delegate found that the picking cards contained the names of 6 employees working at the J & V Farm which did not appear on the payroll records. The Director’s delegate imposed a penalty of \$500.00, under s. 28 of the *Employment Standards Regulation* (the “*Regulation*”), for failing to keep proper payroll records. In written submissions made, the employer did not oppose the finding that it failed to keep records pursuant to section 28 of the *Regulation*. The employer appealed on the basis that the workers were casual employees, and it was not practical or realistic for it to keep payroll records for casual employees. The Determination was confirmed, as there was a clear breach of the *Regulation*, and there was no discretion in the Director or the Director’s delegate to reduce or eliminate the penalty.

ISSUE TO BE DECIDED

Was the penalty imposed properly by the Director’s delegate for a breach by the employer of s. 28 of the *Act*?

FACTS

Sidson carries on business in the Abbotsford area. Sidson hires employees to harvest their crops and contracts out harvesting services to other farms. An audit of the payroll records of Sidson, including “picking cards” was performed by the Director’s delegate. As a result of examining the picking cards, the Director’s delegate found that the picking cards contained the names of 6 employees, Bakhshis K. Rai, Jawinder Grewal, Jora Singh Dhaliwal, Nasib K. Sandhu, Nirmal K. Gill, S.K. Dhanoa, working at the J & V Farm which did not appear on the payroll records. These employees were “casual employees” and not part of the regular work force of Sidson. Casual workers were called in for work by the employer on an as needed basis. The casual pool would change throughout the picking season. The casual workers would keep track of their hours, and submit accounts for payment. The employer would check these accounts against invoices issued to farms. The total amount paid for casual labour during the 1997 season was \$2,600. The Director’s delegate imposed a penalty of \$500.00, under s. 28 of the *Regulation*, for failing to keep proper payroll records in a Determination issued on November 12, 1997. The employer appealed on the basis that the workers were casual employees, and it was

BC EST #D 011/98

not practical or realistic for it to keep payroll records for casual employees. The employer further argued that the *Act* did not reflect the needs of the farm workers sector.

ANALYSIS

It is admitted by the employer that it did not keep records required by section 28 of the *Act* including the name, date of birth, occupation, and other particulars of wages, benefits, deductions and holidays. This section is a mandatory requirement for employers.

The employer argued that the application of the *Act* was not practical or realistic given the industry requires short term workers, available on limited notice, to work during the harvest, which is subject to change in climatic conditions. It was argued that the record keeping would present an onerous administrative challenge, and would create undue expense in an industry that is challenged by falling prices, and industry movement to the United States.

Employers must keep records for all employees regardless of the frequency or duration of employment. The provisions of the *Act* and *Regulations* apply as a minimum set of standards to all employees, unless an exemption is granted by regulation, **regardless of the number of hours worked**. This is clearly set out in sections 2 and 3 of the *Act*. There is no distinction between the records keeping obligations of an employer for casual and permanent employees. A regulation making power, to make exemptions, has been granted by the Legislature to the Lieutenant Governor in Council by virtue of section 127(2) of the *Act*. An exemption from the record keeping provisions of the *Act* has not been granted for the farm labour sector. The employer should, if it feels warranted, take up this issue with the Farm Labour Contractors Association or with government.

The Director's delegate determined that there was a breach of the mandatory requirement of the *Act*. The Director's delegate imposed properly a \$500.00 penalty, pursuant to section 28 of the *Regulation*. The Director's delegate has no discretion to vary the amount of the penalty. There were no grounds of appeal advanced which would warrant a cancellation or variation of the Determination.

ORDER

Pursuant to section 115 of the *Act*, I confirm the penalty of \$500.00 imposed upon Sidson Farms Ltd. by the Director's delegate.

Paul E. Love
Adjudicator
Employment Standards Tribunal