

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: 1999/494

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 12th, 1999, and determined, from interviewing the workers, and the driver of van, that the farm labour contractor had not posted the rate of pay for the employees as required by section 6(1)(d) of the *Employment Standards Regulation*. The Delegate imposed a penalty of \$150.00. The farm labour contractor indicated that there was a notice posted in the van. Given that the farm labour contractor had no personal knowledge of the posting, and supplied no evidence from any person having first hand knowledge, which contradicted the evidence of the Delegate, or demonstrated any error in the Determination, the farm labour contractor did not meet the burden of proof in this case.

ISSUES TO BE DECIDED

Did the Delegate err in determining that the farm labour contractor failed to display prominently a notice containing the wages that the farm labour contractor was paying to the employees?

FACTS

On July 12th, 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 noted 18 employees on site. The Delegated asked questions of the workers to determine if they knew how they were to be paid. Six employees stated that they did not know how much they were going to be paid. One employee stated the pay was \$7.50 per hour. Four employees stated that they were being paid \$7.15 per hour, and one employee stated the pay was \$8.00 per hour.

The Delegate indicated that the wage rate was not displayed at the work site where the work was performed nor was it observed in the vehicle, and the driver was not aware of the existence of the notice. In a written submission the Delegate elaborated that the farm owner indicated at the time of the interview that he had not determined how much he was going to pay the farm labour contractor, or the piece rate paid.

The Delegate determined that the farm labour contractor violated s. 6(1)(d) of the *Employment Standards Regulation*, and assessed a \$150.00 penalty.

Employer's Argument:

The appeal submission was prepared by Gurnek Shergill on behalf of the farm labour contractor. The farm labour contractor also submitted a document written in Punjabi which is stated to be a notice that workers were being paid \$8.00 per hour. The document was not translated into English in the materials provided to me, but the symbol "\$8", is clearly written on the page. The farm labour contractor submitted records indicating that it paid each of the employees \$8.00 per hour for the hours worked. I accept the representation of the farm labour contractor, that the document written in the Punjabi language sets out the rate of pay of \$8.00 per hour.

The farm labour contractor states that the employees were illiterate, and could not have been confused by the rate of pay since, the rate of pay is set out in the pay statement. The farm labour contractor submitted that the workers did not speak English and did not understand the "tone of the inspecting officers as to what they were asking for". The farm labour contractor further states that the fact that the farmer had not decided on how the contractor was to be paid, was irrelevant for the purposes of determining whether the notice was posted in accordance with the *Regulation*.

The farm labour contractor failed to provide any information from its driver employee which sets out the facts in any manner which contradicts the facts determined by the Delegate. The appeal submission prepared by the employer did not contain any evidence from any of the employees supporting Super Farm's submission that the employees knew the wage rate, saw the posted notice, or failed to understand the Delegate on the date of the investigation.

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(1) (d) of the *Regulation* indicates that the farm labour contractor must:

display prominently at the site where work is to be performed, and on all vehicles used by the farm labour contractor for transporting employees, the wages the farm labour contractor is paying to the employees.

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 farm labour contractor has not produced any evidence from any person with first hand knowledge of the facts on the date of the investigation. The submission amounts to a bare assertion that it complied with the *Regulation*, without any proof of compliance.

The uncontradicted evidence from the Delegate, however, was that the notice was not posted at the work site and was not visible in the van. The uncontradicted evidence from the Delegate is that the driver was not aware of the existence of the notice. The uncontradicted evidence is that the employees as a group, did not have a shared understanding of the rate of pay. I am not

satisfied, on the basis of the submissions and evidence that the Delegate made any error in the Determination. As the evidence of the Delegate contained in the Determination and in the subsequent written submission remains uncontradicted, this appeal fails.

I note that this is the 2nd violation of s. 6(1)(d) 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.

Paul E. Love
Adjudicator
Employment Standards Tribunal