

An appeal

- by -

KG Sandhu Enterprises Ltd.
("Sandhu")

- 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: Carol L. Roberts

FILE No.: 2012A/154

DATE OF DECISION: February 15, 2013

DECISION

SUBMISSIONS

Kuljit Kaur Sandhu

on behalf of KG Sandhu Enterprises Ltd.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) KG Sandhu Enterprises Ltd. (“Sandhu”) has filed an appeal of a Determination issued by a delegate (the “delegate”) of the Director of Employment Standards (the “Director”) on December 13, 2012. In that Determination, the Director found Sandhu to be in contravention of Section 28 of the *Act* and imposed an administrative penalty in the total amount of \$500 for the contraventions.
2. Sandhu appeals the Determination contending that the delegate failed to comply with principles of natural justice in making the Determination.
3. Section 114 of the *Act* and Rule 22 of the Tribunal’s *Rules of Practice and Procedure* (the “*Rules*”) provides that the Tribunal may dismiss all or part of an appeal without seeking submissions from the other parties or the Director if it decides that the appeal does not meet certain criteria.
4. These reasons are based only on Sandhu’s written submissions, the Section 112(5) “record” that was before the delegate at the time the decision was made and the Reasons for the Determination. If I am satisfied that the appeal, or part of it, has some presumptive merit and should not be dismissed under Section 114 (1), the delegate may be invited to file further submissions. If the appeal is not meritorious, it will be dismissed.

FACTS AND ARGUMENT

5. On November 27, 2009, the Employment Standards Branch issued Sandhu a three year farm labour contractor (“FLC”) license for up to 45 workers. The license expired November 27, 2012.
6. As part of the FLC licensing process, applicants are required to pass a written examination to satisfy the Director of their knowledge of the *Act* and the *Employment Standard Regulation* (the “*Regulation*”). During the licensing process, applicants are taken through an interview checklist to ensure they understand the applicable legislation, including the requirements of Section 28 of the *Act*. Sandhu’s director, Kuljit Kaur Sandhu, successfully completed the examination and fulfilled all the licensing requirements.
7. On October 22, 2012, the Director issued a Demand for Employer Records to ensure Sandhu was in compliance with the legislation. Sandhu was required to produce and deliver all payroll records, cancelled cheques and direct deposit summaries for the period January 1, 2012, to September 30, 2012, to the Branch by 4:30 p.m. November 5, 2012.
8. Sandhu delivered its payroll records and cancelled cheques to the Branch on November 2, 2012. On examination, a delegate determined that payroll records for a C. Bassi were missing. Although the daily log for September 12, 2012, showed that C. Bassi worked for 8 hours that day, the payroll records contained no entry for C. Bassi. By way of a November 29, 2012, letter, Sandhu was informed about these observations and offered an opportunity to respond. On December 6, 2012, Sandhu stated that C. Bassi worked only on

that one day and that it issued a cheque to her for that work. Sandhu further stated that C. Bassi was on holidays in India and they did not know when she would return.

9. The delegate concluded that Sandhu had failed to maintain payroll records as required under Section 28 of the *Act* for C. Bassi. The delegate found that Sandhu was aware of its obligation to maintain payroll records for each employee regardless of the number of hours worked as Ms. Sandhu had been through the licensing process numerous times.
10. The delegate imposed a \$500 penalty on Sandhu for the contravention.
11. Sandhu says that the delegate ignored the fact that the corporate officers tried their best to locate the employee to obtain her full particulars and that the employee failed to return a TD1 form she was given to complete.
12. Sandhu also says that the delegate ignored the principles of natural justice in failing to consider that Sandhu was unable to locate the employee. It also says that “the charge that the employee was not paid the wages was incorrect”.

ANALYSIS

13. Section 114 of the *Act* provides that at any time after an appeal is filed and without a hearing of any kind the Tribunal may dismiss all or part of the appeal if the Tribunal determines that any of the following apply:
 - (a) the appeal is not within the jurisdiction of the tribunal;
 - (b) the appeal was not filed within the applicable time limit;
 - (c) the appeal is frivolous, vexatious, trivial or gives rise to an abuse of process;
 - (d) the appeal was made in bad faith or filed for an improper purpose or motive;
 - (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
 - (f) there is no reasonable prospect the appeal will succeed;
 - (g) the substance of the appeal has been appropriately dealt with in another proceeding;
 - (h) one or more of the requirements of section 112(2) have not been met.
14. Having reviewed the Section 112 record and Sandhu’s submissions, I find no reasonable prospect that the appeal will succeed.
15. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
 - the director erred in law;
 - the director failed to observe the principles of natural justice in making the determination;
 - evidence has become available that was not available at the time the determination was made.
16. The Tribunal has consistently said that the burden is on an appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds.
17. Although Sandhu’s ground of appeal is that the Director failed to observe the principles of natural justice, there is nothing in the submissions nor in the record that supports that ground of appeal. I am also unable to

find anything in the appeal submission that supports an error on either of the other two statutory grounds of appeal.

Natural Justice

18. Principles of natural justice are, in essence, procedural rights that ensure that parties know the case being made against them, the opportunity to reply, and the right to have their case heard by an impartial decision maker.
19. I am satisfied that the delegate communicated his observations about the payroll documents to Sandhu and that Sandhu was both asked to provide a response and did so. There is nothing to support Sandhu's ground of appeal on this basis.
20. In effect, Sandhu disagrees with the Director's imposition of an administrative penalty for its contravention of Section 28. Having reviewed the record, I find no error in the delegate's findings that Sandhu failed to maintain payroll records for one of its employees. Although Sandhu offered a number of reasons for its failure to do so, I find no error in the delegate's decision to impose an administrative penalty.
21. Employers have an obligation to structure their affairs in a way that complies with relevant legislation. The record shows that Sandhu failed to do so. Once the delegate finds a contravention, there is no discretion as to whether an administrative penalty can be imposed or the amount of that penalty, since those amounts are prescribed by *Regulation*.
22. I am not persuaded that there is a reasonable prospect the appeal will succeed.

ORDER

23. Pursuant to Section 114(1)(f) of the *Act*, I dismiss the appeal on the grounds that there is no reasonable prospect that it will succeed. Accordingly, the Determination, dated December 13, 2012, is confirmed in the amount of \$500 together with whatever further interest that has accrued under Section 88 of the *Act* since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal