

An appeal

- by -

Pandher Farms Contracting Ltd.
("Pandher Farms")

- 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

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2001/767

DATE OF DECISION: January 21, 2002

DECISION

OVERVIEW

This is an appeal filed by Pandher Farms Contracting Ltd. (“Pandher Farms”) pursuant to section 112 of the *Employment Standards Act* (the “Act”). Pandher Farms appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on October 15th, 2001 (the “Determination”).

By way of a letter dated December 21st, 2001 the parties were advised by the Tribunal’s Vice-Chair that this appeal would be adjudicated based on the parties’ written submissions and that an oral hearing would not be held (see section 107 of the *Act* and *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575).

THE PENALTY DETERMINATION

By way of the Determination, the Director’s delegate assessed a \$150 monetary penalty for a second contravention of section 18(4) of the *Employment Standards Regulation* which provides as follows:

18. (4) A farm labour contractor must keep records of the following information:
 - (a) the name of each worker;
 - (b) the work site location and dates worked by each worker;
 - (c) the fruit, vegetable, berry or flower crop picked in each day by each worker;
 - (d) the volume or weight picked in each day by each worker.

The foregoing regulatory requirement is a “specified provision” (see *Regulation*, Appendix 2) for purposes of section 29 of the *Regulation*. Accordingly, a person is liable upon a first contravention of section 18(4) to pay a \$0 penalty; in the event of a second contravention, the penalty increases to “\$150 multiplied by the number of employees affected by the contravention”.

FINDINGS AND ANALYSIS

A \$0 penalty determination was issued against Pandher Farms, pursuant to section 18(4) of the *Regulation*, on September 22nd, 2000. Pandher Farms did not appeal this latter \$0 penalty determination.

The Determination now under appeal was issued following the delivery of certain payroll records--pursuant to lawful demand--which did not comply with section 18(4). As recorded in the Determination, Pandher Farms' representative indicated in an October 5th, 2001 telephone conversation with an Employment Standards Branch officer that the company did not record the information required by subsections 18(4)(c) and (d) since its employees were paid on an hourly basis (I might add, simply for the sake of completeness, that there is no affirmative proof of that latter assertion). As there was only a single affected employee, a \$150 penalty was levied.

In a letter dated October 25th, 2001 appended to its appeal form--and signed by Kartar Singh Pandher on behalf of Pandher Farms--the company acknowledges that the requisite information was not recorded in its payroll records. Section 18(4) of the *Regulation*, unlike section 18(1), does not differentiate between hourly and piecework compensation systems. *All* farm labour contractors, regardless of how they choose to pay their employees, are obliged to maintain certain records. Further, I note that this appellant has had prior notice, in the form of a previous \$0 penalty and the original "Licensing Checklist" provided to it by the Branch, that the record-keeping obligations found in section 18(4) must be satisfied irrespective of the method of payment (piecework versus hourly rate) utilized.

The appeal is dismissed.

ORDER

Pursuant to section 115 of the *Act*, I order that the Penalty Determination be confirmed as issued in the amount of **\$150**.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal