

An appeal

- by -

O K Labour Co. Ltd.
("OK")

- 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: M. Gwendolynne Taylor

FILE No.: 2001/780

DATE OF DECISION: January 22, 2002

DECISION

OVERVIEW

Pursuant to section 112 of the *Employment Standards Act*, O K Labour Co. Ltd. (“OK”) filed an appeal from a Determination by the Director dated October 18, 2001. The Director found that OK had acted as a farm labour contractor, for 8 employees, without being licensed, in contravention of section 13(1) of the *Act*. The Director imposed a penalty of \$2,000.00 under section 98(1) of the *Act*. Under section 29(2)(c) of the *Employment Standards Regulation*, the penalty is \$250.00 per employee because OK had two previous Determinations for similar contraventions.

On November 1, 2001, OK appealed the Determination on the grounds that the Director’s Delegate erred in fact and is harassing OK.

ISSUE

1. Did OK contravene section 13(1) of the *Employment Standards Act*? Does the evidence support a finding that there was a lease arrangement in place prior to July 31, 2001.
2. Does OK have to pay a penalty of \$2,000.00 pursuant to section 98(1) of the *Act* and section 29(2)(c) of the *Employment Standards Regulations*?

FACTS

On July 31, 2001, the Agricultural Compliance Team – Shubhneet Ark, Employment Standards Officer, Brad Novikoff, Investigation and Control officer for Human Resources Development Canada and Ruth Eisworth, Trust Examiner for Canada Customs and Revenue Agency – conducted a site visit to a vineyard owned by A & M Orchards Ltd. (“A & M”). Shubhneet Ark interviewed 8 employees who said they had been brought to work by, and were to be paid by, Kaldep Gidda, who is the Director/Officer of OK.

The team met with Mohinder Dhaliwal, President of A & M who confirmed it was his property and that the workers were supplied and paid by OK. He said the arrangement was that he would pay OK \$1,000 per acre, for 10 acres, and that the workers were to tie, cuff and wire the plants and set up the poles.

When the branch informed OK of the investigation and observations OK replied, by letter dated August 24, 2001, that it had a lease arrangement with A & M and, therefore, OK was not acting as a farm labour contractor.

Sharn Kaila, Employment Standards Officer, spoke with Mohinder Dhaliwal on September 28, 2001. He confirmed what he had said earlier but added that the arrangement had changed. Under the new arrangement, OK would harvest the crop and pay A & M 10% of the proceeds;

A & M would own the plants and OK would supply the labour and own the crop. The arrangement was oral.

With the appeal, OK provided a letter dated October 31, 2001 from Mohinder Dhaliwal in which he confirms the lease arrangement. He also states that the lease arrangement was in effect before July 31, 2001.

ARGUMENT

OK submitted the October 31, 2001 letter from Mohinder Dhaliwal to support the contention that the Director erred in fact and that there was no contravention of section 13(1) of the *Act*.

The Director submitted that the evidence supports the findings in the Determination. The letter of October 31 is the third position put forward by Mohinder Dhaliwal. The Director submits it is unlikely that Mohinder Dhaliwal would have forgotten that he had leased 10 acres to OK and mistakenly tell a team of government representatives that he had agreed to pay a contractor \$10,000.

FINDINGS

I find that the submissions by OK lack credibility. The best evidence is that provided by Mohinder Dhaliwal to the Agricultural Compliance Team on July 31, 2001. That information confirms that OK was supplying labour for A & M. I find that there was no lease arrangement, as alleged, in place as of July 31, 2001.

There has been no suggestion that OK was authorized to provide the labour under a Farm Labour Contractor Licence.

I find that the evidence supports the Director's Determination. The fact that OK and A & M may have altered their arrangements after July 31, 2001, does not affect the Director's finding that a contravention was occurring on July 31, 2001.

There was no evidence to substantiate the claim that the Director was harassing OK. I find that the Director properly calculated the penalty under section 29(2)(c) of the *Employment Standards Regulation*.

ORDER

I confirm the Determination dated October 18, 2001.

M. Gwendolynne Taylor
Adjudicator
Employment Standards Tribunal