

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 -

Sewak Pal Sharma operating as Daveshar Labour Contractor
("Sharma")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE No: 1999/675 & 1999/676

DATE OF HEARING: January 17, 2000

DATE OF DECISION: January 24, 2000

DECISION

APPEARANCES:

J. Walton	For the Director
Sharn Kaila	
Nav Chohan	Employment Insurance Investigator

OVERVIEW

Sewak Pal Sharma operating as Daveshar Labour Contractor (“Sharma”, also, “the employer”) appeals two Determinations dated November 2, 1999, both issued under the authority of the Director of Employment Standards (the “Director”). The appeal is pursuant to section 112 of the Employment Standards Act (the “Act”).

The first of the Determinations is that Sharma contravened section 28 of the Act. I will call this determination the “section 28 determination”. A special investigative unit called the “Agriculture Compliance Team” paid a visit to a farm in Abbotsford. Kuldip Kaur Hans was found to be working on the farm. She said that it was her fourth or fifth day of work. According to the Director, she was found to be sharing a ‘picking card’ with one of Sharma’s employees. The Director also found that a daily log of Sharma’s workers listed Hans as a worker but there was no mention of her in Sharma’s payroll records. The decision imposes a \$500 penalty on Sharma for his failure to keep payroll records as are required by section 28 of the Act.

The second of the Determinations, what I am going to call “the licence determination”, cancels Sharma’s farm labour contractor licence (Licence #55992). The licence is cancelled for reason of Sharma’s failure to comply with the provisions of the Act and Employment Standards Regulation (“Regulation”). According to the licence determination, there were seven different contraventions in all.

Sharma appealed both Determinations. In filing his appeal, he claimed that the Director is wrong in her conclusions. According to Sharma, Hans was not an employee but just came to watch her aunt, Charanjit Kaur Raiwal, work. He indicated that Hans, Raiwal and his driver, Jarnail Singh Bhullar, are all prepared to testify that Hans did not perform any work.

The position of the Director was outlined in a written submission. It is that, while Hans may have changed her story, or just misunderstood questions asked of her, she was, nonetheless, observed to be working for Sharma and was not on the employer’s payroll records.

ISSUES TO BE DECIDED

What I must decide in this case is the matter of whether the employer has or has not shown that one or both of the above Determinations ought to be varied or cancelled for reason of an error in fact or in law.

FACTS

Sharma filed his appeal and, as it went to credibility, the Tribunal set a date for a hearing so that an Adjudicator could hear from witnesses. Sharma, his accountant, and the Director were notified of the hearing by letter dated December 22, 1999. The hearing was set for 9:00 a.m. on the 17th of January, 2000. The notice specifies that the hearing would held be at Library Square, 8th Floor - 360 West Georgia Street in Vancouver.

I arrived for the hearing at the appointed time and place. Representatives and witnesses for the Director were present but not Sharma, nor anyone representing the employer. It is a policy of the Tribunal, that Adjudicators wait 20 minutes for the appellant. I kept the Director and the Director's witnesses waiting for 40 minutes in the hope that the appellant was simply held up in traffic and would eventually arrive. Sharma never did, nor did anyone representing the employer.

Nothing has been heard from the appellant since the date of the hearing.

ANALYSIS

Sharma was notified of the appeal hearing. The appellant did not attend the hearing, nor has he provided a reasonable explanation for his failure to do so. It is Tribunal policy to consider an appeal abandoned where the appellant does not appear for his or her hearing and does not offer any reasonable explanation for the absence.

To appeal a Determination and then not attend the appeal hearing, and not provide a reasonable explanation for the absence, will in most cases demonstrate that the appeal is frivolous, vexatious, trivial or not brought in good faith. An appeal that is frivolous, vexatious, trivial or not brought in good faith may be dismissed pursuant to section 114 (1)(c) of the Act. I have not been given any reason to believe that Sharma's two appeals are anything but frivolous, trivial or not in good faith and that leads me to dismiss both of them on that basis, as the Act permits.

Sharma did not attend the hearing set in his two appeals and he has not presented any evidence that either of the Determinations is in error. He has failed to show any error on the part of the Director that calls for a Determination to be varied or cancelled.

ORDER

The appeals are dismissed. The section 28 determination dated November 2, 1999, and the licence determination, also dated November 2, 1999, are confirmed pursuant to section 115 of the Act.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal