

An appeal

- by -

KG Sandhu Enterprises Ltd.
(the “employer”)

- 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: Fernanda Martins

FILE No.: 2000/767

DATE OF DECISION: January 22, 2001

DECISION

OVERVIEW

This is an appeal brought by KG Sandhu Enterprises Ltd. (the "employer"), pursuant to Section 112 of the Employment Standards Act (the "Act"), from a Determination issued by a delegate of the Director of Employment Standards (the "Director") on October 20, 2000.

The Director found that the employer, as a farm labour contractor licensed under Part 2 of the Employment Standards Regulation (BC Reg 396/95) (the "Regulation"), contravened Section 6(1)(f) of the Regulation by failing to file with the Director:

- (i) an up-to-date list of the registration and licence numbers of each vehicle it used for transporting employees and,
- (ii) copies of the inspection certificate and other records that must be maintained under section 25 of the Motor Vehicles Act Regulations.

The Director imposed a penalty of \$0.00 in accordance with the prescribed schedule of penalties under Section 29(2) of the Regulation.

The employer's reasons for appeal are:

"THE SITE VISING (sic) TEAM DID NOT MAKE ANY EFFORTS TO FIND THE FACTS RELATING TO THIS DETERMINATION. WITH INCOMPLETE INFORMATION ON RECORD THE DETERMINATION (sic) SAID THAT WE CONTRAVENED SECTION 6(1) OF THE EMPLOYMENT STANDARD REGULATIONS"

The employer is seeking the remedy of setting aside the warning given by the Director.

This appeal proceeded by way of written submissions.

ISSUES TO BE DECIDED

This appeal requires me to decide whether the Director erred in finding the employer to be in contravention of section 6(1)(f) of the Employment Standards Regulation.

FACTS

On May 26, 2000, the Employment Standards Branch of Abbotsford received an application for a farm labour contractor licence by KG Sandhu Enterprises Ltd.

In its application, the employer stated that it was just starting operation as a Farm Labour Contractor. The employer did not complete the section of the application form that required notation of vehicle specifications if the contractor was providing transportation for its employees. In the section requesting information regarding hired transportation for employees, the employer noted: "(we have not yet buy the van yet?)". The last page of the application form set out that "As a farm labour contractor, I agree to operate in compliance with all provisions of the Employment Standards Act and the Regulations thereto." The application form was signed by the owner of the company.

On June 15, 2000, a Farm Labour Contractor Licence was issued to the employer.

On July 8, 2000, a commercial vehicle inspection report was completed by the Insurance Corporation of British Columbia concerning a 1985 bus with a vehicle registration number of 6883792. The vehicle passed inspection.

On July 13, 2000, the Insurance Corporation of British Columbia issued to the employer an owner's certificate of insurance and vehicle licence for a yellow Ford bus with a licence plate number of 0448EF.

On October 12, 2000 the Agricultural Compliance Team conducted a site visit at Mike Guichon Ltd. located at 40th Street in Ladner where KG Sandhu Enterprises Ltd. had transported five employees in a yellow school bus (licence no. 0448EF) to harvest potatoes. The vehicle was not registered with the Director.

On October 15, 2000, the Employment Standards Branch office of Abbotsford received a letter with attachments by facsimile. The letter was dated October 15, 2000 and signed by the owner of the employer company. The letter stated:

"This is a registration to the Director of Employment Standards, to notify that a vehicle belonging to K.G. Sandhu Enterprises Ltd, registration number 6883792 for ICBC is a bus used to operate transportation for the above mentioned company. Sorry for inconvenience"

Attached to the letter were also:

A copy of the Owner's Certificate of Insurance and Vehicle Licence indicating that the effective date of insurance was 13 July 2000 to expire 12 January 2001.

A copy of the employer's farm labour contractor licence dated June 15, 2000.

A copy of an Insurance Corporation of British Columbia Commercial Vehicle Inspection Report for the employer's 1985 bus with registration number 6883792.

On October 20, 2000 a Determination was issued finding the employer to be in contravention of Regulation 6(1). The Director imposed a penalty of \$0.00 as "KG Sandhu Enterprises Ltd. was aware of this requirement through the Farm Labour Contractor licensing process". The Determination also set out that a further contravention by the employer of the specified provision would result in a penalty of \$150.00 per employee and that contraventions beyond that may result in penalties to a maximum of \$500.00 per employee. The Determination also set out that under section 7 of the Regulation, the Director may cancel or suspend a farm labour contractor's licence, subject to the provisions of that section.

ARGUMENTS

The employer submits that the facts in dispute are:

"THE BASIC CHARGE THAT WE WERE TRANSPORTING THE EMPLOYEES IN A VEHICLE THAT WAS NOT REGISTERED WITH THE EMPLOYMENT STANDARD BRANCH. WHEREAS WE HAVE ALREADY SENT OUR REQUEST FOR REGISTRATION BY MAIL WHICH WAS NOT REGISTERED IN YOUR OFFICE TILL OCTOBER 12, 2000 WHEN WE AGAIN FAXED THAT INFORMATION TO YOU."

The Director states that the Employment Standards Branch did not receive any additional information from the employer to register vehicles until a fax was received at the Abbotsford office on October 15, 2000, after the site visit was conducted. The Director points out that the correspondence does not refer to any previously mailed information.

The Director argues that the employer was aware of the requirement to ensure that all vehicles used to transport employees were registered with the Employment Standards Branch. The Director states that during the licensing process, the employer was provided with an information package which further detailed the requirements of section 6(1) of the Regulation. The Director also states that the employer acknowledged receipt of the package as shown in a copy of a document with the employer's signature and the date of June 15, 2000 with a check mark under a column headed "PKG".

The Director submits that the vehicle registration and licence number is important to the Agriculture Compliance Team as a means to ensure that vehicles used to transport employees are insured and have been safety inspected. The information is also referred to by the Agriculture Compliance Team to ensure that all farm labour contractors are licensed.

ANALYSIS

The onus is on the Appellant to demonstrate error or a basis for the Tribunal to vary the Director's Determination.

Section 13 of the Act provides that a person must be licensed to act as a farm labour contractor. A farm labour contractor is defined in the Act, as an employer whose employees work, for or under the control or direction of another person in connection with the planting, cultivating or harvesting of an agricultural product.

Section 127 of the Act gives the Lieutenant Governor in Council power to make regulations respecting the licensing and duties of farm labour contractors.

Section 5 (2) of the Regulation provides that the Director may issue a licence only if the applicant has completed a written application in a form required by the director, paid the licence fee, satisfied the director by an oral or written examination, or both, of the applicant's knowledge of the Act and this regulation, and posted security in accordance with subsection (3).

Section 6(1)(f) of the Employment Standards Regulation sets out that a farm labour contractor must file with the director

- (i) an up-to-date list of the registration numbers and licence numbers of each vehicle used by the farm labour contractor for transporting employees, and
- (ii) if the vehicle is owned by the farm labour contractor, copies of the inspection certificate and other records that must be maintained under section 25 of the Motor Vehicle Act Regulations.

The employer does not dispute that it was aware of its obligation to comply with section 6(1)(f) of the Regulation.

The Act places the burden of maintaining records and providing them to the Director on the employer.

Other than its submission that it had "already" mailed a "request for registration", the employer has not provided any evidence that any attempt was made to comply with the Regulation prior to the visit of the Agriculture Compliance Team on October 12, 2000. There is no evidence that the Team was advised during or after its visit that the employer had already provided the vehicle information to the Director. The correspondence "faxed" to the Employment Standards Branch office on October 15, 2000, indicates that it formed the "registration to the Director of Employment Standards to notify that a vehicle belonging to K.G. Sandhu Enterprises Ltd, is a bus used to operate transportation for the above mentioned company." The employer also apologized for inconvenience.

If the employer had indeed already mailed the vehicle information, then a statement to that effect in subsequent correspondence would have been more logical rather than the apology that was provided. The only interpretation that I can attribute to the "fax" is that it was the

first and only instance of filing the required information with the Director. I do not accept that any effort was made by the employer to comply with the Regulation prior to the site visit on October 12, 2000.

The fact that the employer provided the information shortly after the site visit does not remedy the already existing breach of the duty to file. Filing an up-to-date list of registration and licence numbers of each vehicle used by the farm labour contractor for transporting employees is one of the prerequisites to operating as a farm labour contractor.

The employer has not demonstrated error on the part of the Director or a basis for the Tribunal to vary the Director's Determination.

ORDER

Pursuant to section 115 of the Act, I order that the Determination be confirmed as issued.

FERNANDA MARTINS

Fernanda Martins
Adjudicator
Employment Standards Tribunal