

An appeal

- by -

Preet Farm Contractors Ltd.

- 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: John Savage

FILE No.: 2007A/21

DATE OF DECISION: May 10, 2007

DECISION

FACTS

1. Preet Farm Contractors Ltd. (“Preet”) appeals a determination of the Director dated January 30, 2007 (the “Determination”) that found it contravened Section 40.2(2) of the *Employment Standards Regulation*, B.C. Regulation 396/95 as amended, (the “Regulation”) by failing to pay all wages to farm workers employed by it by direct deposit to the credit of the employees account in a savings institution.
2. The Determination does not indicate that any amount is owing, only that the Regulation was contravened, and orders that contraventions cease. An administrative penalty of \$500 is imposed.
3. Preet acknowledges that it did the acts alleged. During the period between January 2006 and April 2006 employees were provided cheques for their wages instead of being paid by direct deposit. Preet provided an explanation, however, that it did so because the employees did not provide Preet with the information requested, namely, bank account numbers and/or void cheques to facilitate direct deposits.

ISSUE

4. The only issue in the appeal is whether Preet can be excused from non-compliance with Section 40.2(2) of the Regulation 396/95 where its employees did not provide the information necessary to facilitate direct deposit.

LEGISLATION

5. Section 40.2(2) of the Regulation requires that farm workers be paid wages by deposit to a savings institution account. It reads as follows:
 - 40.2 (1) In respect of the payment of wages to farm workers, farm labour contractors are excluded from section 20 of the Act.
 - (2) A farm labour contractor must pay all wages to farm workers employed by the farm labour contractor
 - (a) in Canadian dollars, and
 - (b) by deposit to the credit of the farm worker's account in a savings institution.B.C. Reg. 257/2004.
6. Section 98(1) of the *Employment Standards Act* provides that where the director makes a determination and imposes a requirement a person is subject to a monetary penalty:
 98. (1) In accordance with the regulations, a person in respect of whom the director makes a determination and imposes a requirement under section 79 is subject to a monetary penalty prescribed by the regulations.
 - (1.1) A penalty imposed under this section is in addition to and not instead of any requirement imposed under section 79.
 - (1.2) A determination made by the director under section 79 must include a statement of the applicable penalty.

7. Section 29(1) of the Regulation prescribes monetary penalties for breaches of the *Employment Standards Act* and Regulation. It provides:
29. (1) Subject to section 81 of the Act and any right of appeal under Part 13 of the Act, the following monetary penalties are prescribed for the purposes of section 98(1) of the Act:
- (a) a fine of \$500 if the director determines that a person has contravened a requirement under the Act, unless paragraph (b) or (c) applies;
 - (b) a fine of \$2 500 if
 - (i) after the date of a determination under paragraph (a), the director determines that the person contravened the requirement referred to in that paragraph subsequent to the determination under paragraph (a), and
 - (ii) that subsequent contravention occurs within 3 years after the date of the most recent contravention of the same requirement in relation to which there has been a determination under paragraph (a),unless paragraph (c) applies;
 - (c) a fine of \$ 10 000 if
 - (i) after the date of a determination under paragraph (b), the director determines that the person contravened the requirement referred to in that paragraph subsequent to the determination under paragraph (b), and
 - (ii) that subsequent contravention occurs within 3 years after the date of the most recent contravention of the same requirement in relation to which there has been a determination under paragraph (b).

DISCUSSION AND ANALYSIS

8. Preet acknowledges that it is in breach of Section 40.2(2) of the Regulation. It provides an excuse, namely, that its employees did not provide it with the requisite information. It suggests that the only alternative to it was to not provide the then prospective employees with employment. Preet says that the spirit of the Act and Regulation is to ensure that farm workers are paid on a timely basis and it did that.
9. While I agree with Preet that it may have paid its farm workers in a timely way, it did not pay them in the manner prescribed by the Act and Regulations. The Legislature in its wisdom has prescribed a manner of making payment. No doubt that manner of making payment has been prescribed to address a concern that farm workers actually receive into their own accounts the amount of their wages. Payment by cheque does not accomplish that purpose.
10. Preet suggests that the only alternative to it was to not provide employment to these farm workers. Obtaining an account in a savings institution does not seem a difficult or particularly onerous task. But even if Preet is correct that the only alternative to it was to not provide employment to these workers, its own obligations are clear.
11. There are many acts and regulations that impose requirements on parties who are privileged to be licensed to do regulated activities. Being licensed as a farm labour contractor is a regulated and licensed activity. The obligation to comply with the regulations is cast upon the licensee who gains the privilege to do the licensed activity but must comply with the regulations that govern the licensed activity. To ensure it is able to comply with the Regulation a farm labour contractor must ensure that the farm workers it employs have the requisite accounts.

12. In *Dhillon Labour Contractors Ltd.*, BCEST #D097/06 this Tribunal found that a farm labour contractor who hires a worker without first determining the information necessary to enable it to comply with section 40.2(2) does so at its own peril. In short, if a prospective employee does not provide the information necessary to allow the farm labour contractor to comply with section 40.2(2) the employer will be in contravention of this section.
13. As the facts are clear, and the contravention has been found, this Tribunal has consistently held that it has no jurisdiction to relieve against the administrative penalty provisions of the Act and Regulations: *Re Marana Management Services Inc. (c.o.b. Brothers's Restaurant)*, BC EST #D160/04; *N & G Retail Inc. (c.o.b. Petro Canada)*, BC EST #D012/06. Such applies even where an employee consents to the contravention, *Re 461530 BC Ltd. (c.o.b. Williamsons Transfer Services)*, BC EST #D059/97, or where the contravention is not purposeful, *Re C.S.Q. Foods Ltd. (c.o.b.) Bill Bailey's Family Restaurant*, BC EST #D154/97.
14. Thus, once the delegate finds a contravention, there is no discretion as to whether an administrative penalty can be imposed. Furthermore, the amount of the penalty is fixed by Regulation: *Re: N. & G. Retail Inc.* BC EST #D012/06. To the same effect are cases such as *Virtu@lly Canadian Inc. operating as Virtually Canadian Inc.*, BC EST #D087/04, and *Kimberly Dawn Kopchuk*, BC EST #D049/05.
15. In the circumstances Preet has breached the Regulation. The mandatory administrative penalty is properly imposed.

SUMMARY

16. Preet contravened the Regulation by failing to pay its employees in accordance with section 40.2(2) of the Regulation. Once a contravention has been found there is no discretion in this Tribunal to relieve against an administrative penalty. The administrative penalty is confirmed.

ORDER

17. The appeal is dismissed and the Determination of the Delegate is confirmed.

John Savage
Member
Employment Standards Tribunal