

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 -

Jaspal's Workforce Ltd.
("Workforce")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE No: 1999/699 & 1999/700

DATE OF DECISION: March 3, 2000

DECISION

OVERVIEW

Jaspal's Workforce Ltd. ("Workforce", also, "the employer") has appealed two Determinations by a delegate of the Director of Employment Standards (the "Director"). Both of the Determinations are dated November 4, 1999. The appeals are pursuant to section 112 of the *Employment Standards Act* (the "Act").

In one of the Determinations, what I will call the "section 17 determination", Workforce is found to have contravened section 17 (1) of the *Act* in failing to pay 45 employees at least semi-monthly. The Director, for reason of that and a previous violation of that section of the *Act*, fines Workforce \$6,750.

The second Determination, what I will call the "licence determination", cancels the employer's Farm Labour Contractor License. That Determination is issued for reason of the section 17 determination and six previous violations of the *Act* and *Employment Standards Regulation* (the "*Regulation*").

In appealing the Determinations, Workforce admits that it was late in paying its employees in two different periods but it claims that was not its fault or, at least, not something that it could help or control. According to Workforce, his accountant left for a vacation in the first instance and, in the second, the accountant had to leave for Calgary for reason of an illness and death in his family. Beyond that, the employer claims that the employees all accepted that they would be paid late.

ISSUES TO BE DECIDED

What I must decide in this case is the matter of whether or not the employer shows that either of the two Determinations ought to be varied or cancelled for reason of an error in fact or in law.

FACTS

In a Determination dated December 9, 1998, Workforce is found to have contravened section 17(1) of the *Act*.

In the section 17 determination which is of particular concern herein, Workforce is again found to have violated section 17(1) of the *Act* on two more occasions. Workforce admits that it failed to pay its employees at least semi-monthly and as the *Act* requires in July/August, 1999, and again in September of 1999. In the first instance, its accountant was not available for the purpose of preparing pay cheques because he had taken a vacation. In the second instance, the accountant had to fly to Calgary so that he could visit with an uncle that was seriously ill and then fly to that city a second time on the death of his uncle.

Workforce alleges that its employees went along with the idea of being paid late. Workforce has not submitted evidence which indicates that the employees consented to be paid later than the *Act* requires.

The licence determination lists different violations of the *Act* by Workforce. There are 7 violations in all. The employer disputes only the last of the contraventions, the section 17(1) which is the subject of the section 17(1) determination.

ANALYSIS

Section 17 (1) of the *Act* is as follows:

17 (1) At least semimonthly and within 8 days after the end of the pay period, an employer must pay to an employee all wages earned by the employee in a pay period.

The employer does not dispute that its employees were not paid at least semi-monthly. The employer claims that the failure to pay wages, as the *Act* requires, could not be helped, was out of its control and not its fault. It also suggests that the employees all agreed or consented to being paid late. That is not to show that either of the Determinations is in error.

Workforce has not shown me that any of its employees agreed or consented to be paid less than semi-monthly. But had they done so, that still did not allow Workforce to pay less than semi-monthly. The employees are simply unable to waive their rights given section 4 of the *Act*. They may not agree to accept less than what the *Act* provides.

4 The requirements of this Act or the regulations **are minimum requirements**, and an agreement to waive any of those requirements is of **no effect**, subject to sections 43, 49, 61 and 69.

(my emphasis)

The obligation to pay at least semi-monthly rests squarely on the employer. That is not any less so if the preparation of pay cheques is contracted out. It is the employer's responsibility, if the preparation of pay cheques is to be contracted out, to find an accountant or other agent, that is certain to prepare paycheques so that all of the employees are paid at least semi-monthly. If an accountant cannot prepare paycheques so that employees are paid as the *Act* requires, that is Workforce's problem. It still has to see to it that the employees are paid on time. It has to prepare the pay cheques itself or hire someone else to do it. Workforce did not do that. Even on discovering that its accountant left for a vacation in July/August without first preparing pay cheques, it did not act so that it would not happen again. What that shows me is that Workforce has little or no regard for the *Act* and its employees.

Section 98 (1) of the *Act* provides the Director with the power to impose a penalty in the event of a contravention of the *Act*.

98 (1) If the director is satisfied that a person has contravened a requirement of this Act or the regulations or a requirement imposed under section 100, the director may impose a penalty on the person in accordance with the prescribed schedule of penalties.

In imposing the penalty, the delegate explains that it is for the reason that it is the employer's second violation of section 17(1) of the *Act*, which is a serious violation, and the large number of employees affected by the second contravention. He has set out what I understand to be the specific circumstances in which the Director will impose a penalty and, therefore, met what is required in the way of reasons for the penalty determination.

Section 29 of the *Employment Standards Regulation* governs the amount of the penalty.

29 (1) In this section, “**specified provision**” means a provision or requirement listed in Appendix 2.

(2) The penalty for contravening a specified provision of a Part of the act or of a Part of this regulation is the following amount:

(a) \$0, if the person contravening the provision has not previously contravened any specified provision of that Part;

(b) **\$150 multiplied by the number of employees affected by the contravention**, if the person contravening the provision has **contravened a specified provision of that Part on one previous occasion**;

(c) \$250 multiplied by the number of employees affected by the contravention, if the person contravening the provision has contravened a specified provision of that Part on 2 previous occasions;

(d) \$500 multiplied by the number of employees affected by the contravention, if the person contravening the provision has contravened a specified provision of that Part on 3 or more previous occasions.

Section 17 (1) is listed in Appendix 2 of the *Regulation* as a “specified provision”. In that Workforce has twice contravened section 17(1), the amount of the penalty is therefore \$150 multiplied by the number of employees affected, 45 in this case. That is \$6,750.

The Licence determination

Section 7 of the *Regulation* allows the Director, in certain circumstances, to cancel a farm labour contractor's licence.

7. The director may cancel or suspend a farm labour contractor's licence in any of the following circumstances:

- (a) the farm labour contractor made a false or misleading statement in an application for a licence;
- (b) the farm labour contractor is in breach of a condition of the licence;
- (c) the farm labour contractor or an agent of the farm labour contractor contravenes the Act or this regulation.

Workforce and/or its agent, the accountant, have contravened the *Act*. That put the Director in position to consider whether or not to exercise the discretionary power to cancel the employer's farm labour contractor licence.

As I understand the licence determination, it is that the Director has decided to cancel farm labour contractor licences where a serious disregard for the *Act* is shown through several different contraventions of the *Act*, or repeated contraventions of the same section of the *Act* which are blatant and serious, and that it has decided to cancel Workforce's licence because the employer has repeatedly contravened an important section of the *Act*, section 17 (1), and also for reason of a number of different violations by the employer of the *Act*. That is reason for cancellation of the employer's farm labour contractor licence. The Determinations are confirmed.

ORDER

I order, pursuant to section 115 of the *Act*, that the section 17 (1) determination which is dated November 4, 1999, and the licence determination, also dated November 4, 1999, be confirmed.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal