

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 -

Sandhu Bros. Contractors Ltd.
("Sandhu")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: David B. Stevenson

FILE No: 1999/722 and 1999/723

DATE OF DECISION: January 25, 2000

DECISION

APPEARANCES:

on behalf of

OVERVIEW

This decision addresses two appeals pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Sandhu Bros. Contractors Ltd. (“Sandhu”) of two Determinations which were issued on November 18, 1999 by a delegate of the Director of Employment Standards (the “Director”). The first Determination concluded that Sandhu had contravened Section 28 of the *Act* and under the authority of Section 79 of the *Act* and Section 7 of the *Employment Standards Regulation* (the “*Regulation*”) the Director canceled the Farm Labour Contractor licence (Licence No. 85093) issued to Sandhu. The second Determination ordered Sandhu to cease contravening and to comply with Section 28 of the *Act* and, under Section 28 of the *Regulation*, imposed a \$500.00 penalty on Sandhu.

Sandhu appeals the conclusion of the Director that it had contravened Section 28 of the *Act* and appeals the decisions to cancel its Farm Labour Contractor licence and to impose the \$500.00 penalty.

The Tribunal has concluded that an oral hearing is not necessary in this case.

ISSUES TO BE DECIDED

The issue in this case is whether Sandhu has shown that the Determination is wrong in fact or in law. The burden in this appeal is on Sandhu to show an error has been made.

FACTS

Sandhu was, at the relevant time, a farm labour contractor. The following facts are set out in the Determination:

1. On October 1, 1999, a Demand for Employer Records of Sandhu was issued by the Director.
2. On October 18, 1999, the records were delivered to the Director.
3. The Director reviewed the records and discovered that a number of employees working for Sandhu were not in the payroll records.
4. The Agriculture Compliance Team had conducted a site visit at Johal Farms on August 18, 1999 and at Mike Guichon Farms in Ladner on August 26,

1999. During those visits they had interviewed a number of people at Johal Farms and had taken a copy of the daily log at Mike Guichon Farms. A review of that information and material showed that there were employees missing from the Sandhu's payroll records.
5. Rajinder S. Thind and Jaswinder Mehengar had been interviewed at Johal Farms and Daliwar S. Daily and Ajeet S. Sanghara were on the daily log of Mike Guichon Farms. The Director issued a Determination on August 24, 1999 in respect of Rajinder S. Thind, citing a breach of Section 9(1) of the *Act*. Sandhu filed a late appeal in respect of that Determination which was dismissed by the Tribunal.
 6. None of those persons were included in the payroll records of Sandhu.
 7. Prior to the November 18, 1999 Determinations, Sandhu had been the object of six other Determinations citing contraventions of the *Act*.
 8. Sandhu was aware of its obligations under Section 28 of the *Act* through the Farm Labour Contractor licencing process.

In the appeal, Sandhu offers no new facts or evidence. Sandhu says that Gurjit S. Sanghera, Dilbagh Dulay and Jaswinder K. Mehanger were casual workers whose names were in the daily log. Sandhu does not dispute that these persons were employees or that they were not included in the payroll record.

In respect of Rajinder S. Thind, Sandhu says this person was not employed by them.

ANALYSIS

There is nothing in either appeal that justifies an extensive analysis. These appeals border on the frivolous. Sandhu has done nothing but disagree with the conclusions and decisions of the Director.

Sandhu does not dispute that the casual employees named in the appeal were not included in their payroll record. There is a suggestion in their appeal that there is no requirement to include "casual" employees in the payroll record. They are wrong about that. The *Act* draws no distinction between casual employees and any other employee. More particularly, there is nothing in Section 28 indicating that the statutory obligation to keep records for each employee does not include the obligation to keep records for what Sandhu calls "casual" employees.

In respect of the factual issue concerning Rajinder S. Thind, Sandhu had the opportunity to appeal the conclusion that he was an employee following the issuance of the Determination of August 24, 1999. They failed to do so in a timely manner. The appeals raise absolutely no basis to consider the question of whether Rajinder S. Thind was an employee of Sandhu. Even if it did, I would be very reluctant to open that question in the context of this appeal for two reasons.

First, the circumstances of his employment was not the only basis upon which the Director reached the conclusion the Sandhu had contravened Section 28 of the *Act*, so the question is moot. Second, Sandhu has already attempted to appeal the conclusion that Rajinder S. Thind was an employee and that appeal has been dismissed. Sandhu has not sought any reconsideration of that decision and it is inappropriate for Sandhu to ask this panel of the Tribunal, acting under Section 112 of the *Act*, not Section 116, to reconsider the decision of another panel of the Tribunal also acting under Section 112.

Finally, Sandhu has not shown that the decision of the Director to impose a \$500.00 penalty was unjust or unreasonable in the circumstances. A contravention of the *Act* has been established. There is ample support for the decision of the Director to impose a penalty in the Determination and in Sandhu's previous history of contravention of the *Act*.

The appeals are dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determinations dated November 18, 1999 be confirmed.

David B. Stevenson
Adjudicator
Employment Standards Tribunal