

**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:** 1999/724

**DATE OF DECISION:** February 7, 2000

## **DECISION**

### **OVERVIEW**

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Sandhu Bros. Contractors Ltd. (“Sandhu”) of a Determination which was issued on November 18, 1999 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Sandhu had contravened Section 18(4) of the *Employment Standards Regulation* (the “Regulation”) and the Director imposed a \$00.00 penalty on Sandhu.

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. The demand required Sandhu to produce payroll records, canceled cheques, bank statements and picking cards.
2. On October 18, 1999, Sandhu delivered payroll records and canceled cheques to the Director.
3. Sandhu failed to deliver picking cards and/or a record of picked crop.
4. Sandhu was aware of its obligations under Section 18 of the *Regulation* through the Farm Labour Contractor licencing process.

In the appeal, Sandhu says that the Determination was based on a misunderstanding by the Director concerning how its employees are paid. Sandhu says that its employees are not paid on a piece work basis, but on an hourly rate and asserts:

We do keep the records of berry picked by the workers and that is given to the farm owners to pay us. That record has got nothing to do with the Pay Roll of Workers who are paid on the basis of daily log sheet and hours mentioned therein.

In reply to the appeal, the Director does not dispute that Sandhu paid its workers on an hourly basis, not a piece work basis, but submits that the obligation to keep picking cards and a record

of the crop picked is not dependent on the method by which a Farm Labour Contractor pays its employees.

## ANALYSIS

Subsection 18(4) of the *Regulation* states:

- (4) *A farm labour contractor must keep records of the following information:*
- (a) *the name of each worker;*
  - (b) *the work site location and dates worked by each employee;*
  - (c) *the fruit, vegetable or berry crop picked in each day by each worker;*
  - (d) *the volume or weight picked in each day by each worker.*

Sandhu says that its employees are paid an hourly rate, so the requirement to keep the records contemplated by subsection 18(4) of the *Regulation* does not apply to them. I disagree. There is nothing in subsection 18(4) that limits its application to only those farm labour contractors whose workers are employed on a piece work basis. The opening words of subsection 18(4) state that a “*farm labour contractor must keep records . . .*”. The provision has general application to all farm labour contractors, even those, such as Sandhu, who claim their workers are paid an hourly rate. In fact, Sandhu acknowledges that it kept records of the crops picked, but says it was unable to produce the records because they were given to the farm owners. That explanation strains credulity, but more to the point it indicates that such records are routinely kept by even those farm labour contractors, such as Sandhu, whose workers are paid an hourly rate.

Sandhu was required to keep the records identified in subsection 18(4), in the manner required by subsection 18(5), and those should have been delivered to the Director. The appeal is dismissed.

## ORDER

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

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**