

An appeal

- by -

Mohinder Multani carrying on business as K-P Labour Contractors

- 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:** Sheldon M. Seigel

**FILE No.:** 2011A/15

**DATE OF DECISION:** May 30, 2011

## DECISION

### SUBMISSIONS

|                  |   |
|------------------|---|
| Mohinder Multani | on his own behalf                                 |
| Harman Nandha    | on behalf of the Director of Employment Standards |

### OVERVIEW

1. This is an appeal by Mohinder Multani carrying on business as K-P Labour Contractors (“K-P”), pursuant to section 112 of the *Employment Standards Act* (the “Act”), of a determination issued by the Director of Employment Standards on January 20, 2011.
2. The Determination found that section 17 of the *Act* had been contravened. The Delegate ordered that Mr. Multani cease contravening s.17 of the *Act* and comply with the *Act* and *Employment Standards Regulation* (the “Regulation”) and to pay \$500 administrative penalty pursuant to section 29(1) of the *Regulation*.
3. The Appellant filed an appeal, which was received by the Tribunal on February 28, 2011. The Appellant alleges that the Director of Employment Standards failed to observe the principles of natural justice in making the determination.
4. The Tribunal determined that this matter would proceed by written submissions.

### ISSUE

5. Did the Director of Employment Standards fail to observe the principles of natural justice in making the determination?

### STATUTORY PROVISIONS

#### EMPLOYMENT STANDARDS ACT

#### [RSBC 1996] CHAPTER 113

##### **Purposes of this Act**

2 The purposes of this Act are as follows:

- (a) to ensure that employees in British Columbia receive at least basic standards of compensation and conditions of employment;
- (b) to promote the fair treatment of employees and employers;

##### **Requirements of this Act cannot be waived**

4 The requirements of this Act and the regulations are minimum requirements and an agreement to waive any of those requirements, not being an agreement referred to in section 3 (2) or (4), has no effect.

**Paydays**

- 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.
- (2) Subsection (1) does not apply to
- (a) overtime wages credited to an employee's time bank, or
  - (b) vacation pay.

**Appeal of director's determination**

- 112 (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:
- (a) the director erred in law;
  - (b) the director failed to observe the principles of natural justice in making the determination;
  - (c) evidence has become available that was not available at the time the determination was being made.

*Employment Standards Act***EMPLOYMENT STANDARDS REGULATION****B.C. Reg. 396/95**

- 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) fine of \$500 if the director determines that a person has contravened a requirement under the Act, ...
- 40.2 (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.

**DISCUSSION**

6. Mr. Multani's business is licensed as a Farm Labour Contractor under the *Act* to employ a maximum of 100 employees. K-P's license expires on July 25, 2011. Mr. Multani's submissions explain the circumstances of the alleged contravention. A large number of farm labourers were employed to pick berries. In the normal course of such arrangements the labourers were requested to produce banking information so that K-P could pay the employees by direct deposit as is required by the *Regulation*.
7. The Determination indicates that all of the information provided by Mr. Multani in the appeal was available and considered in the course of making the Determination. I note that there is no evidence either referenced in the Determination or in the submissions in the appeal that contradicts any of Mr. Multani's evidence or submissions. I therefore accept Mr. Multani's evidence as fact.

8. In the Determination, the Delegate finds that K-P was instructed in the relevant provisions of the *Act* and *Regulation* and tested on familiarity with those provisions. The Delegate cites s.17 of the *Act* as requiring a Farm Labour Contractor to pay its employees within 8 days after the end of each pay period. The Delegate finds that K-P did not do so, and that she is bound to impose a mandatory administrative penalty for the contravention of the *Act*.
9. On October 25, 2010, an Employment Standards Branch (Branch) office demanded K-P produce payroll and employee records. K-P complied and delivered those records on November 15, 2010. On reviewing the records the Branch discovered that nine employees had been paid wages by direct deposit beyond the 8-day requirement of s.17. It is noteworthy that all employees were paid their full wages before the Branch brought the irregularity to the attention of K-P. In my view this further bolsters the credibility of Mr. Multani with respect to the mechanism of the late payments.
10. The Delegate describes Mr. Multani's evidence including signed declarations of the nine employees that they were aware of the reasons for the late payments and that they were indeed paid in full for all wages owing at the next pay period. There is no evidence of any complaint by an employee. The Delegate also describes a meeting between the Branch and Mrs. Multani during which Mrs. Multani:

... informed the delegate that in order to comply with section 40.2 of the *Regulation*, which states a FLC must pay all wages via direct deposit, and to avoid an administrative penalty for contravening this section, she delayed payment until direct deposit was set up for the employees ...
11. The Delegate makes the following findings:
  1. K-P was aware of the requirements of the Act and Regulation as it had been through the licensing process in prior years and tested on requirements of the Act. As one of the requirements of the Act, Section 17 states that an employer must pay employees all wages earned at least semi-monthly and within 8 days after the end of a pay period.
  2. During the licensing process, applicants are taken through a checklist to educate them on the requirements of the Act and Regulation. As such, Mrs. Multani was informed during licensing that her company is to pay employees all wages earned semi-monthly and within 8 days after the end of each pay period.
  3. Section 4 of the Act states that any party cannot waive the minimum standards of employment as set out in the Act. As such K-P cannot make an agreement with an employee to delay payment.
  4. An employee is required to be paid all wages earned at least semi-monthly and within 8 days after the end of the pay period. Though K-P was attempting not to contravene section 40.2 of the Regulation by delaying payment until direct deposit was set up for the employees in question, the firm cannot contravene Section 17 of the Act in order to avoid contravening Section 40.2 of the Regulation. It is the employer's responsibility to comply with all requirements of the Act and Regulation. In this case, K-P could have waited to employ these individuals until they provided their bank account information for direct deposit of their wages.
12. The Delegate concluded K-P had contravened Section 17 of the *Act*. Multani alleges several of these employees failed to produce their banking information on a timely basis and accordingly their wages could not be deposited as required within 8 days of the end of their respective pay periods. The labourers' banking information was thereafter provided and K-P paid all of the wages due at the first available opportunity, which in all cases was the next pay period. In the case of three employees, wages were paid ten days beyond the 8-day statutory time frame. In the case of another six employees, wages were paid five days beyond the 8-day statutory time frame.

13. I agree with the Delegate that K-P cannot make an agreement with an employee to delay payment, as a party cannot waive the provisions of the *Act* other than as described therein. There is no evidence to indicate that such an arrangement was reached.
14. The Delegate says: “the firm cannot contravene Section 17 of the Act in order to avoid contravening Section 40.2 of the Regulation.” It follows then, that the firm cannot contravene section 40.2(b) of the *Regulation* in order to avoid contravening s.17 of the *Act*. The licensed Farm Labour Contractor found itself in a position where compliance with the *Act* and *Regulation* with respect to the method and timing of payment of wages for one pay period to these select employees was impossible. The only certainty is that K-P was unable to meet the divergent requirements of the regulatory scheme that arose in the circumstances.
15. The Delegate stated: “K-P could have waited to employ these individuals until they provided their bank account information for direct deposit of their wages.” I agree that K-P could have done so. Indeed K-P might be advised to consider the provision of banking information a requirement before employing individuals to whom they have an obligation to direct deposit wages if such provisions are not already in place within the organization.
16. The Delegate states that section 29(1)(a) of the *Regulation* imposes an administrative penalty on a person who is found by the Director to have contravened a provision of the *Act* or *Regulation*. That section prescribes a fine of \$500 subject to section 81 of the *Act* and any right of appeal under Part 13 of the *Act*. This is such an appeal. The Tribunal does not have inherent jurisdiction. The statutory grounds of appeal are set in s. 112(1)(a)-(c) of *Act*. The Appellant has not argued, and I do not find, the Delegate erred in his interpretation and application of sections 40.2(2) and 29(1) of the *Regulation* and s. 17 of the *Act*. The facts showed the workers were not paid within the time period stipulated by the legislation. As such, a requirement under the *Act* was contravened. Pursuant to s. 29(1) of the *Regulation* a fine was assessed. The Appellant has not shown this to be in error. There is no evidence that there has been a breach of natural justice in that there is no indication and no argument that the process leading up to and including the Determination was faulty. There is no relevant evidence, that was not available at the time the Determination was made, that has been provided in this appeal. As a result, the appeal must fail.

## ORDER

17. Pursuant to section 115 of the *Act*, I order that the Determination dated January 20, 2011, be confirmed.

---

**Sheldon M. Seigel**  
**Member**  
**Employment Standards Tribunal**