

An appeal

- by -

Unique Labour Force Ltd.
(the “Appellant”)

- 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: Rajiv K. Gandhi

FILE No.: 2016A/27

DATE OF DECISION: March 22, 2016

DECISION

SUBMISSIONS

Rajpal Sandhu

on behalf of Unique Labour Force Ltd.

OVERVIEW

1. Unique Labour Force Ltd. (the “Appellant”) is a farm labour contractor, licenced according to Part 2 of the *Employment Standards Regulation* (the “Regulation”).
2. Specifically relevant to this appeal is section 6(4) of the *Regulation*:
 - 6 (4) *A farm labour contractor must keep at the work site and make available for inspection by the director a daily log that includes*
 - (a) *the name of each worker,*
 - (b) *the name of the employer and work site location to which workers are supplied and the names of the workers who work on that work site on that day,*
 - (c) *the dates worked by each worker,*
 - (d) *the fruit, vegetable, berry or flower crop picked in each day by each worker, and*
 - (e) *the volume or weight picked in each day by each worker.*
3. By way of a determination issued on January 12, 2016 (the “Determination”), the Director of Employment Standards (the “Director”) found the Appellant to have contravened section 6(4) of the *Regulation* on October 26, 2015.
4. The Appellant seeks to cancel or vary the Determination and the associated administrative penalty, on the basis that:
 - (a) the Director has failed to observe the principles of natural justice in making the Determination; and
 - (b) evidence has become available that was not available at the time the Determination was made,both permitted grounds of appeal, respectively under sections 112(1)(b) and 112(1)(c) of the *Employment Standards Act* (the “Act”).
5. Having reviewed the Determination, the Appellant’s very brief submissions delivered to the Tribunal on February 19, 2016, and the Director’s Record submitted on February 25, 2016, I am satisfied that this appeal should be dismissed according to section 114(1) of the *Act*, for the reasons which follow.

THE FACTS AND ANALYSIS

6. On October 26, 2015, several delegates of the Director (the “Inspection Team”) conducted a site inspection at 16400 Cambie Road, in Richmond, British Columbia, where the Appellant had provided labourers to harvest cranberries.

7. At this work site, the Inspection Team identified five labourers supplied by the Appellant, and requested production of the daily log to be kept according to section 6(4) of the *Regulation*. No such log was produced, and no reason given for its absence.
8. On the same day, the Inspection Team conducted a second site inspection at 16351 Cambie Road where the Appellant had also provided labourers to harvest cranberries.
9. At the second site, a representative of the Appellant produced two work logs, both of which are included in the Record.
10. According to the Determination, these logs did not comply with subsections 6(4)(a) and 6(4)(b) of the *Regulation* – the name of the work site is not listed, and the list of employees is incomplete. On review, I note that the information required by subsections 6(4)(c), or 6(4)(d) of the *Regulation* also appears to be missing.
11. On November 2, 2015, the Director sent a letter to the Appellant, requesting an explanation for what, *prima facie*, appear to be contraventions of the *Regulation*.
12. In response, the Appellant delivered two log sheets to the Director – one for the first work site, and one for the second. Both are included in the record, but on my review, neither appears to comply with subsections 6(4)(d) or 6(4)(e) of the *Regulation*.
13. Finally, on December 29, 2015, the Director spoke to a representative of the Appellant, by telephone. No explanation beyond supposition was provided for the Appellant's failure, on October 26, 2015, to disclose the daily log that complied with the *Regulation*, or at all.

Section 112(1)(c) – Fresh Evidence

14. In this appeal, the Appellant says that evidence has now become available which was not available at the time the Determination was made. However, the Appellant did not include that evidence in its submissions, and did not respond to the Tribunal's request for documents in support of the appeal.
15. I am unable to say what fresh evidence the Appellant now seeks to adduce, and I have no way to consider the admissibility of evidence that I do not have.
16. Accordingly, I see no way forward for an appeal under section 112(1)(c) of the *Act*.

Section 112(1)(b) – Failure to Observe the Principles of Natural Justice

17. The Appellant also claims that the Director failed to observe the principles of natural justice.
18. Natural justice requires the Director, at all times, to act fairly, in good faith, and with a view to the public interest (*Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48 at paragraph 2).
19. Within the framework of an investigation under the *Act*, fairness means that all parties involved have, among other things, the right to notice and the right to be heard (*Tyler Wilbur operating Mainline Irrigation and Landscaping*, BC EST # D196/05, at paragraph 15).

20. The Appellant does not offer any explanation for its suggestion that the rules of natural justice have somehow been violated. I suspect that the Appellant believes that it was not given a fair opportunity to tender the log sheets when the work sites were inspected.
21. If that is indeed the case, I note that before issuing the Determination, the Director afforded the Appellant further opportunity for explanation by way of the November 2, 2015, letter and the December 29, 2015, telephone conversation with the Appellant's representative. The Appellant's response is best described as anemic, but it is not so for a lack of opportunity.
22. The totality of the evidence clearly supports a conclusion that the Appellant has failed to comply with most, if not all of section 6(4) of the *Regulation*, and I see nothing in the materials before me that would suggest that the Director has in any way violated the rules of natural justice.
23. I find that this appeal has no reasonable prospect of success.

ORDER

24. Pursuant to section 115 of the *Act*, I confirm the Determination issued on January 12, 2016, and I dismiss this appeal pursuant to section 114(1)(f) of the *Act*.

Rajiv K. Gandhi
Member
Employment Standards Tribunal