



An appeal

- by -

Super Sandhu Enterprises Ltd.  
(the “Employer”)

- 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:** Yuki Matsuno

**FILE No.:** 2007A/042

**DATE OF DECISION:** July 19, 2007

## DECISION

### SUBMISSIONS

Gurcharan Sandhu

for the Employer

Reena Grewal

for the Director of Employment Standards

### OVERVIEW

1. The Employer, Super Sandhu Enterprises Ltd., appeals a Determination of the Director of Employment Standards (the “Director”) issued April 13, 2007 (the “Determination”), pursuant to section 112 of the *Employment Standards Act* (the “Act”).
2. In the Determination, a delegate of the Director (the “Delegate”) found that the Employer had contravened section 6 of the *Employment Standards Regulation* (the “Regulation”) by failing to keep daily log records, including the volume or weight of the crop picked in each day by each worker. As a result, the Delegate imposed an administrative penalty on the Employer in the amount of \$2500.00.
3. The Employer now appeals the Determination on the ground that the Director, represented by the Delegate, failed to observe the principles of natural justice.
4. The Tribunal has reviewed the appeal and has determined that it will be decided on the basis of written materials only. In deciding this appeal, I have before me the Employer’s appeal form and submission; the Director’s submission; the Determination; and the Record.

### ISSUE

5. Did the Director fail to observe the principles of natural justice in making the Determination?

### BACKGROUND

6. The Employer is a licensed farm labour contractor under the *Employment Standards Act*, with a farm labour contractor licence valid from October 22, 2004 to October 22, 2007. On July 27, 2006, the Agriculture Compliance Team (the “ACT”) conducted a site visit at Sindhu Farms located at 32787 Townshipline Road, Abbotsford. The purpose of the visit was to ensure compliance with the *Act* and *Regulation* with regard to farm labour contractors, producers, and farm workers. On the date of the site visit, the Employer was providing contract labour for this farm.
7. On February 19, 2007, a delegate of the Director issued the Employer a Demand for Records pursuant to section 85(1)(f) of the *Act* (the “Demand”). The Demand required the Employer to produce and deliver payroll records, cancelled cheques, and daily log records required to be kept under section 6(5) of the *Regulation* on or before March 5, 2007. The records, received on March 3, 2007, did not contain the volume or weight of the crop picked in each day by each worker, as required by sections 6(4) and 6(5) 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.
- 6(5) The records required by subsection (4) must
- (a) be in English, and
  - (b) be retained by the employer for 2 years after the employment terminates, at the employer's principal place of business in British Columbia.
8. On March 13, 2007, the Delegate sent a letter to the Employer pointing out that the records lacked the information required to be kept by the Employer under sections 6(4)(d) and (e), and providing an opportunity to the Employer to respond and send in documents if it did not agree with the Delegate's findings. On March 19, 2007, a manager of the Employer informed the Delegate over the phone that the Employer did not keep records of the volume or weight of the crop picked by each employee because the employees were paid on an hourly basis. The Delegate told the manager that the requirement applied regardless of how the employees were paid.
9. By letter dated March 20, 2007, the Employer responded that only ten percent of their employees work on farms, and the rest work in greenhouses; that the company gets paid by farmers on a hourly basis, not on a piece rate basis; that they pay their employees hourly; that as a result, they do not keep picking cards [presumably recording the volume or weight of the crop picked] for any employees; that the manager of the Employer did not know that the Employer had to keep track of the weight picked by each employee until he was informed of the fact on March 19, 2007 during the phone conversation with the Delegate; and that the Employer will maintain a picking record for each employee in the future.
10. In the Determination, the Delegate noted that sections 6(4) and 6(5) of the *Regulation* do not distinguish between employees paid on an hourly basis and those paid on a piece rate basis; regardless of how they are paid, the Employer must keep records of the volume or weight of the crop picked in each day by each employee. The Delegate found, therefore, no merit in the argument that the Employer did not keep the records because it paid the employees on an hourly basis. The Determination further noted that the Employer had been through the farm labour contractor licensing process, which required that the Employer pass a written examination regarding its knowledge of the *Act* and *Regulation* and be taken through an interview checklist that includes the requirement to record the weight or volume of crops outlined in sections 6(4) and 6(5) of the *Regulation*.
11. That Delegate found that the Employer had contravened the *Regulation*. The Delegate ordered the Employer to cease contravening Part 2, section 6 of the *Regulation* and to comply with all the requirements of the *Act* and *Regulation*. Because the Employer had contravened section 6 on a previous occasion within the last three years, the Delegate imposed a penalty of \$2,500 on the Employer pursuant to section 29(1) of the *Regulation*.

## ARGUMENT AND ANALYSIS

12. As the appellant, the Employer bears the onus of showing that the Determination is wrong and should be varied or cancelled. The Employer appeals on the ground that the Director failed to observe the principles of natural justice in making the Determination.
13. In order to successfully appeal on this ground, an appellant would have to prove a procedural defect, amounting to unfairness, in how the investigation was carried out or how the Determination was issued. Procedural defects such as the following may amount to a failure to observe the principles of natural justice: the employer was not informed of the case against it; the employer was not allowed an opportunity to respond; or the person or persons carrying out the investigation or issuing the determination were biased.
14. In its submission, the Employer indicates that in its view, it has not contravened section 6, and gives a lengthy explanation of why this was so, focusing on the difficulty of obtaining information about the weight and volume of crop picked by the labourers under its employ. In other words, the Employer's submissions deal with the merits of the case. None of the Employer's submissions suggest any failure to observe the principles of natural justice.
15. In her submission on behalf of the Director, Ms. Grewal says that the Employer was given an opportunity to respond to the allegations against it, and the Delegate considered all arguments presented by the Employer and found them to be irrelevant. Ms. Grewal points out that the Delegate found that the Employer, in responding to the allegations, admitted that it had contravened section 6 of the Regulations. Ms. Grewal goes on to state that, in these circumstances, “. . . the Director is of the view that a disincentive is needed to promote compliance with the Act and to prevent a repeat contravention.”
16. I have examined the submissions and the Record and can find no indication the Director failed to observe the principles of natural justice. It is well established in Tribunal jurisprudence that an appeal of a Determination is not another opportunity to have the case heard on the merits. Further, once a contravention of the *Act* or *Regulation* has been found, and a requirement imposed under section 79 of the *Act*, section 98 of the *Act* obliges the Director impose an administrative penalty in accordance with section 29 of the *Regulation*:
- 98(1)** In accordance with the regulations, a person in respect of whom the director makes a determination and imposes a requirement under section 79 is subject to a monetary penalty prescribed by the regulations.
- (1.1) A penalty imposed under this section is in addition to and not instead of any requirement imposed under section 79.
- (1.2) A determination made by the director under section 79 must include a statement of the applicable penalty.
17. The Tribunal has decided on numerous occasions that the Director has no discretion with respect to imposing an administrative penalty: see *Kamal Farming Ltd.*, BC EST # D089/06; *Ponderosa Motor Inn*, BC EST # D011/06; *N. & G. Retail Inc.*, BC EST # D012/06. Administrative penalties are part of a larger statutory scheme designed to regulate conditions of employment in British Columbia and are generally consistent with the purposes of the *Act*, including the purpose of ensuring that employees in British

Columbia receive, at minimum, basic standards of compensation and conditions of employment: see *Summit Security Group Ltd.*, BC EST # D133/04, reconsideration of BC EST # D059/04.

18. The record-keeping requirements of section 6 of the *Regulation* are not unknown to the Employer. In the Determination, the Delegate noted that for a farm labour contractor such as the Employer to be granted a licence, the contractor must have knowledge of the record keeping requirements outlined in section 6. Further, this was the Employer's second violation of the section 6 requirement regarding crop weight and volume records in the last three years, and it was presumably informed of the recording requirement at the time of its first violation. In its letter dated March 20, 2007, the Employer indicated that it will maintain a picking record for each employee in the future, showing a willingness to comply with the *Regulation* from now on.
19. In my view, the Determination was made properly and the administrative penalty imposed correctly. There is no evidence to show that the principles of natural justice were not observed throughout. This appeal does not succeed.

## **ORDER**

20. Pursuant to Section 115 of the *Act*, I order that the Determination dated April 13, 2007 be confirmed.

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**Yuki Matsuno**  
**Member**  
**Employment Standards Tribunal**