

An appeal

- by -

Multani Enterprises Ltd.  
("Multani")

- 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:** Carol L. Roberts

**FILE No.:** 2010A/53

**DATE OF DECISION:** June 16, 2010

## DECISION

### SUBMISSIONS

Mohinder Kaur Multani

on behalf of Multani Enterprises Ltd.

Ravi Sandhu

on behalf of the Director of Employment Standards

### OVERVIEW

1. This is an appeal by Multani Enterprises Ltd. (“Multani”), pursuant to Section 112 of the *Employment Standards Act* (“the *Act*”), against a Determination of the Director of Employment Standards (the “Director”) issued March 19, 2010 (the “Determination”).
2. Multani was a licensed farm labour contractor as defined by section 1 of the *Act* for the period April 21, 2009, to April 21, 2010. As part of a routine compliance audit, a delegate of the Director of Employment Standards (the “Director’s delegate”) determined that Multani had contravened section 40.2 of the *Employment Standards Regulation* (the “*Regulation*”) in failing to pay its employees by direct deposit and s. 13 of the *Act* by employing a greater number of employees than it is licensed to employ on a particular day in 2009. Because this was Multani’s third contravention of section 40.2, the Director imposed a \$10,000.00 administrative penalty for that contravention and a further \$500.00 penalty for the contravention of section 13 of the *Act*.
3. Multani says that the Director’s delegate failed to observe the principles of natural justice in making the Determination and seeks to have the Determination varied.
4. Section 36 of the *Administrative Tribunals Act* (“*ATA*”), which is incorporated into the *Employment Standards Act* (s. 103), and Rule 17 of the Tribunal’s *Rules of Practice and Procedure* provide that the Tribunal may hold any combination of written, electronic and oral hearings. (see also *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575). This appeal is being adjudicated on the section 112(5) “record”, the written submissions of the parties and the Reasons for the Determination.

### ISSUE

5. The issue on appeal is whether or not the Director’s delegate failed to observe the principles of natural justice in determining that Multani had contravened section 40.2 of the *Regulation*.

### FACTS AND ARGUMENT

6. As part of a routine audit, Multani was served with a Demand to produce and deliver payroll records to the Branch. After reviewing the records submitted by Multani, the Director’s delegate concluded “that many of its employees were not paid by direct deposit for numerous pay periods.” The records showed that Multani employees were issued self sealed cheques for earned wages.
7. The records also revealed that on September 10, 2009, Multani employed 63 employees although its contracting license allowed it to employ a maximum of 45 employees on any one day.

8. In response, Multani indicated that because of financial difficulties primarily relating to the collection of accounts receivable, it was not able to make the necessary advance payments to the direct deposit company it had contracted with.
9. With regard to the issue of the number of employees it was allowed to employ per day, Multani stated that in September 2009 only 31 employees were employed as farm workers with the balance assigned to warehouse and packaging duties. Although it was requested to do so by the delegate, Multani did not provide evidence to substantiate its assertion that some of its employees worked in warehouse/packaging during September 2009.
10. The Director's delegate found that Multani was aware of the requirements of the *Act* and *Regulation* because it had completed the farm labour contractor's licensing process. Multani's directors were required to pass a written examination to satisfy the Director of their knowledge of the relevant legislation and to complete an interview process designed to ensure their understanding of the licensing requirements. The Director's delegate found that Multani had failed to pay the farm workers it employed by direct deposit. The Director's delegate noted that it was the employer's responsibility to obtain funds in order to pay its employees by direct deposit, and Multani's failure to do so constituted a contravention of s. 40.2 of the *Regulation*.
11. The Director's delegate found no evidence that any of Multani's employees were employed in warehouse/packaging. In fact, Multani's records show that all 63 workers employed on September 10, 2009, were deployed at three different locations, none of which had warehouse or packaging facilities. The Director's delegate concluded that Multani contravened section 13 of the *Act*. This finding is not under appeal.
12. On appeal, Multani does not deny that it had made payments to employees via cheque rather than by direct deposit as required, but does state that, as of April 14, 2010, when the appeal was submitted, all of their employees were being paid on a regular basis and that there were no outstanding wages owed. It contends that the Director overlooked the financial situation of the company in making his determination.
13. The delegate notes in his response that the appeal document submitted by Multani utilizes the same arguments that it presented to the Director's delegate prior to his issuance of the Determination and that these arguments had been considered and addressed in the Determination. The delegate states that the Director believes that a "disincentive" is required to promote compliance with the *Act* and prevent ongoing contraventions.

## ANALYSIS

14. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
  - the director erred in law
  - the director failed to observe the principles of natural justice in making the determination; or
  - evidence has become available that was not available at the time the determination was being made
15. The burden of establishing the grounds for an appeal rests with an Appellant.
16. Multani's appeal document does not describe how it was denied natural justice. In *JC Creations* (BC EST # RD317/03) the Tribunal concluded that, given the purposes and provisions of the legislation, it is inappropriate to take an "overly legalistic and technical approach" to the appeal document: "The substance

of the appeal should be addressed both by the Tribunal itself and the other parties, including the Director. It is important that the substance, not the form, of the appeal be treated fairly by all concerned.”

17. As a result, I have not limited the grounds of appeal to that identified by the appellant. Nevertheless, the appeal document must disclose an appealable issue. A disagreement with the result presented in the Determination, in and of itself, is not a ground of appeal. An appeal is not an opportunity to re-argue a case that has been advanced before the delegate.
18. I am not persuaded that the appeal has merit. There is nothing in the appeal submission that is substantively different than what was provided to the delegate prior to his Determination.
19. Multani has not established a reviewable error of law (*Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)* (1998) B.C.J. (C.A.)). Nor has it submitted evidence that was not available at the time the Determination was being made.
20. I can see no basis for the suggestion that Multani was denied natural justice given that it was afforded every opportunity to address the findings of the delegate further to the compliance audit. The Director’s delegate considered Multani’s response in determining that it had contravened the *Regulation*. Indeed, Multani acknowledged the contravention. It offered an excuse for the contravention that the delegate considered insufficient and repeats that excuse in the appeal document. It appears to believe that the penalty assessment as it relates to s. 40.2 is unfair in the circumstances given that it asserts that it pays its employees in full on a regular basis but not by direct payment. However, in *Douglas Mattson* (BC EST # RD647/01) the Tribunal found that it could not ignore the plain meaning of the words of a statute and substitute its view of the legislative intent based solely on its judgement about what is “fair” or “logical”. Further in *Acton Super-Save Gas Stations Ltd.* (BC EST # D067/04) the Tribunal concluded that the *Act* provides for mandatory administrative penalties without any exceptions: “The legislation does not recognize fairness considerations as providing exceptions to the mandatory penalty scheme”.
21. Once the Director’s delegate finds a contravention, there is no discretion as to whether or not an administrative penalty can be imposed. Furthermore, the amount of the penalty is fixed by *Regulation*. Given that Multani acknowledged the contravention of s. 40.2, I find no error in the Director’s delegate’s conclusion and dismiss the appeal.

## ORDER

22. I Order, pursuant to Section 115 of the *Act*, that the Determination, dated March 19, 2010, be confirmed, together with whatever interest may have accrued since that date.

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**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**