

An appeal

- by -

Preet Farm Contractors Ltd.
(“Preet”)

- 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.: 2013A/40

DATE OF DECISION: July 25, 2013

DECISION

SUBMISSIONS

Ranjit Sandhu, C.G.A.

on behalf of Preet Farm Contractors Ltd.

OVERVIEW

1. Pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) Preet Farm Contractors Ltd. (“Preet”) has filed an appeal of a Determination issued by a delegate (the “delegate”) of the Director of Employment Standards (the “Director”) on June 5, 2013. In that Determination, the Director found Preet to be in contravention of Section 27(e) of the *Employment Standards Regulation* (the “*Regulation*”) and cancelled Preet’s licence to operate as a farm labour contractor. The Director also imposed an administrative penalty in the amount of \$500.
2. Preet’s sole ground of appeal is that the delegate failed to comply with principles of natural justice in making the Determination.
3. Section 114 of the *Act* and Rule 22 of the Tribunal’s *Rules of Practice and Procedure* provides that the Tribunal may dismiss all or part of an appeal without seeking submissions from the other parties or the Director if it decides that the appeal does not meet certain criteria.
4. These reasons are based only on Preet’s written submissions, the Section 112(5) “record” that was before the delegate at the time the decision was made and the Reasons for the Determination. If I am satisfied that the appeal, or part of it, has some merit and should not be dismissed under Section 114 (1), the Respondent and the delegate may be invited to file further submissions. If the appeal is not meritorious, it will be dismissed.

FACTS AND ARGUMENT

5. On December 1, 2011, the Employment Standards Branch issued Preet a farm labour contractor (“FLC”) licence for up to 50 workers. The licence was amended on July 16, 2012, for up to 98 employees. The licence is to expire November 30, 2014.
6. As part of the FLC licensing process, Preet agreed to the release of information to the Ministry of Transportation – Commercial Vehicle Safety Unit for the purpose of ensuring compliance with the law.
7. On April 25, 2013, an inspector with the Commercial Vehicle Safety Enforcement (“CVSE”) determined that a vehicle owned and operated by Preet, which was being used to transport farm workers to their work site, was overloaded. The CVSE officer inspector found 28 people, including the driver, inside a 15 seat passenger bus. CVSE issued Preet a ticket for violating the *Motor Vehicle Act Regulations*.
8. Section 7 (e) of the *Regulation* allows the Director to cancel or suspend a FLC licence if a FLC has been found to have contravened certain provisions of the *Motor Vehicle Act Regulations*. Section 7 (i) also allows the Director to suspend or cancel a FLC if the Workers’ Compensation Board has taken enforcement action against a FLC with respect to the transportation of employees.
9. On July 14, 2010, the Director suspended Preet’s licence to operate as a FLC for one month. This followed a warning letter issued to Preet by WorkSafe BC after Preet had been found transporting 16 workers in a

vehicle that was legally permitted to carry 15 workers. WorkSafe BC also issued Preet an Order under section 187 of the *Workers Compensation Act* to comply with Part 17 of the Occupational Health and Safety Regulation.

10. On May 14, 2013, the Director's delegate communicated the observations of CVSE regarding its apparent contravention of section 7(e) of the *Regulation* to Preet, and invited Preet to respond. On May 28, 2013, Preet responded, stating that although the vehicle did have an excessive number of people within it, the vehicle was stationary and waiting for another vehicle that was to transport 14 of the employees.
11. The delegate concluded that Preet had provided no evidence rebutting a conclusion that section 39.021(a) of the *Motor Vehicle Act Regulations* had been contravened. The delegate noted that the Director had no authority to determine whether or not Preet should have been issued a violation ticket under the *Motor Vehicle Act*. The delegate stated that the Director's sole duty was to determine what effect that had on Preet's FLC licence.
12. The delegate noted that the purpose of the release of information was to ensure FLC's are in compliance with the law, including having vehicles that are safe and not overloaded. The delegate stated:

Overloading of a vehicle is a serious violation which puts workers at risk and is unacceptable. This is the second time Preet Farm has been found to be transporting more workers in a vehicle than legally permitted. The July 14, 2010 suspension of its FLC licence was intended to deter Preet Farm from transporting workers in an unsafe manner. It would appear it has not had that effect.
13. The delegate concluded that, in light of the seriousness of the issue coupled with the fact that it was the second time Preet had been found transporting more workers than legally permitted; the cancellation of Preet's FLC licence was warranted.
14. The delegate cancelled Preet's licence to operate as a FLC effective June 13, 2013, and imposed a \$500 penalty on Preet for the contravention of section 7(e) of the *Regulation*.
15. Preet contends that it has diligently provided farm labour for the past three years without any contravention of the rules. It submits that a fine was paid for the "small contravention that did happen in 2010".
16. Preet submits that a "lenient approach" is necessary at this very busy time, and, as I understand the argument, that the peak growing season should be considered a "mitigating factor". Mr. Sandhu submits that Preet is assisting 98 labourers obtain gainful employment and that they will be affected by the Determination. Mr. Sandhu further submits that Preet should be "given another chance to prove himself". [reproduced as written]

ANALYSIS

17. Section 114 of the *Act* provides that at any time after an appeal is filed and without a hearing of any kind the Tribunal may dismiss all or part of the appeal if the Tribunal determines that any of the following apply:
 - (a) the appeal is not within the jurisdiction of the tribunal;
 - (b) the appeal was not filed within the applicable time limit;
 - (c) the appeal is frivolous, vexatious, trivial or gives rise to an abuse of process;
 - (d) the appeal was made in bad faith or filed for an improper purpose or motive;
 - (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
 - (f) there is no reasonable prospect the appeal will succeed;

- (g) the substance of the appeal has been appropriately dealt with in another proceeding;
 - (h) one or more of the requirements of section 112(2) have not been met.
18. Having reviewed the Section 112 record and Mr. Sandhu's submissions, I find no reasonable prospect that the appeal will succeed.
19. Section 112(1) of the *Act* provides that a person may appeal a determination on 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.
20. The Tribunal has consistently said that the burden is on an appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds.
21. Although Preet's ground of appeal is that the Director failed to observe the principles of natural justice, there is nothing in the submissions nor in the record that supports that ground of appeal. Indeed, Mr. Sandhu seeks, on Preet's behalf, to have the Tribunal "re-consider your decision and allow him to have his licence". To clarify, for Preet's information, this is an appeal of the Director's Determination, not a request to the Director to reconsider the Determination. In any event, as the Tribunal has repeatedly stated, an appeal is not an opportunity to re-argue a case that has been made before the delegate.
22. Principles of natural justice are, in essence, procedural rights that ensure that parties know the case being made against them, the opportunity to reply, and the right to have their case heard by an impartial decision maker. I am satisfied that the delegate communicated the information about the *Motor Vehicle Act Regulations* contraventions to Preet and that Preet was both asked to provide a response and did so. There is nothing to support Preet's ground of appeal on this basis.
23. Preet does not deny contravening the *Motor Vehicle Act Regulations* or the *Regulation*. It simply disagrees with the Director's decision to cancel its FLC licence and seeks "leniency". It contends that the licence cancellation is unfair in the circumstances, given that it had one "small" prior contravention.
24. Section 7 of the *Regulation* provides as follows:
- The director may refuse to issue a licence to a farm labour contractor, refuse to renew or reinstate a farm labour contractor's licence or cancel or suspend a farm labour contractor's licence in any of the following circumstances:
- ...
- (e) the farm labour contractor has been found, with respect to a motor vehicle used by the farm labour contractor for the purpose of transporting employees of the farm labour contractor, another farm labour contractor or a producer, under the *Motor Vehicle Act*, to have contravened a provision of Division 39 — Road Safety of the *Motor Vehicle Act Regulations*;
 - (f) the Workers' Compensation Board has, under the *Workers Compensation Act*, taken an enforcement action described in one or both of subparagraphs (i) and (ii) against the farm labour contractor with respect to transportation, by the farm labour contractor, of employees of the farm labour contractor, another farm labour contractor or a producer:

- (i) issued an order under section 187 of the *Workers Compensation Act* to comply with section 115 of that Act or section 4.1 or 4.3 or Part 17 of the Occupational Health and Safety Regulation;
- (ii) imposed an administrative penalty in the circumstances described by section 196 (1) of the *Workers Compensation Act* with respect to a contravention of section 115 of that Act or section 4.1 or 4.3 or Part 17 of the Occupational Health and Safety Regulation.

25. In *Jody L. Goudreau* (BC EST # D066/98) the Tribunal said:

The Tribunal will not interfere with that exercise of discretion unless it can be shown the exercise was an abuse of power, the Director made a mistake in construing the limits of her authority, there was a procedural irregularity or the decision was unreasonable. Unreasonable, in this context, has been described as being:

... a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting “unreasonably”.
Associated Provincial Picture Houses v. Wednesbury Corp. [1948] 1 K.B. 223 at 229 (p. 4)

26. In *Takarabe and others* (BC EST # D160/98) the Tribunal also added:

In *Boulis v. Minister of Manpower and Immigration* [(1972), 26 D.L.R. (3d) 216 (S.C.C.)] the Supreme Court of Canada decided that statutory discretion must be exercised within “well established legal principles”. In other words, the Director must exercise her discretion for *bona fide* reasons, must not be arbitrary and must not base her decision on irrelevant considerations. (p 15)

27. Preet does not allege that the Director abused her power, or acted outside her jurisdiction. In my view, the delegate considered the circumstances of the contravention, which he found to be serious, and noted the harm the regulations were designed to address. The delegate further considered the fact that Preet had a previous contravention for the same reason. I find that the delegate exercised his discretion taking into consideration the statutory scheme and did not consider irrelevant factors. There is no evidence he was arbitrary or otherwise unreasonable.

28. Preet has not shown any basis upon which the Tribunal would review the Director’s exercise of discretion in this case.

29. I find no grounds for the appeal. Accordingly, pursuant to section 114 (1)(f) of the *Act*, I dismiss the appeal.

ORDER

30. Pursuant to section 115 of the *Act*, I Order the Determination, dated June 5, 2013, be confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal