

An appeal

- by -

Jas Rai Labour Supply Ltd.

- 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: John Orr

FILE No.: 2006A/66

DATE OF DECISION: June 7, 2006

DECISION

OVERVIEW

1. This is an appeal by Jas Rai Labour Supply Ltd. (“Jas Rai” or “the employer”) pursuant to S.112 of the *Employment Standards Act* (“the *Act*”) from a Determination dated February 9, 2006 issued by the Director of Employment Standards (“the Director”). The Determination found that Jas Rai contravened Section 17 of the *Act* and Section 40.2 of the *Employment Standards Regulation* (“the *Regulation*”) and imposed two penalties in the amount of \$500.00 each.
2. A delegate of the Director noted in particular that on June 10, 2004 the *Regulation* was amended to include section 40.2 which provided that a farm labour contractor must pay all wages to farm worker employees by direct deposit into the employees account in a savings institution.
3. The delegate found that Jas Rai had failed to pay some employees all wages earned in a pay period at least semi-monthly and within 8 days after the end of the pay period contrary to Section 17 of the *Act* and failed to pay by direct deposit into a savings institution.
4. Jas Rai has appealed the penalty determination on the basis that where employees were not paid semi-monthly it was at their own request, as the employees only wanted their pay-cheques issued when they requested it. In regard to the direct deposit, Jas Rai says that the employees also consented to receiving their cheques personally as the direct deposit system had not yet been set-up. Jas Rai seeks to have the penalties cancelled.
5. In the exercise of its authority under section 103 of the *Act*, which incorporates section 36 of the *Administrative Tribunals Act*, the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

ANALYSIS

6. Section 112 of the *Act* provides that a person served with a determination may appeal the determination to the Tribunal on the following three 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.
7. Jas Rai submits that the delegate failed to observe the principles of natural justice in that the *Act* states that one of the purposes of the *Act* is to promote the fair treatment of employers and employees. Jas Rai submits section 40.2 of the *Regulation* is contrary to this principle as it singles out farm labour contractors to require them to use a direct deposit system for payroll.
8. Jas Rai also submits that the delegate did not consider that the employees consented to the payment process and requested that the paycheques be held until they requested them.

9. These arguments do not seem to have been made to the delegate at the time of the investigation. The delegate states that the only submission received was to the effect that Jas Rai had attempted to set up a direct deposit system with Ceridian but that the registration was not successful. Jas Rai's response did not include any explanation or contradicting evidence as to why the employees were not paid semi-monthly and within 8 days of the end of each pay period.
10. In response to the appeal the delegate refers to section 4 of the *Act* that provides that the requirements of the *Act* and *Regulations* are minimum standards and an agreement to waive any of the requirements has no effect. He also notes that whether or not the legislation is fair the appellant admits that he failed to set up a direct deposit system as required.
11. In considering this appeal it is evident that Jas Rai does not dispute that the company is a farm labour contractor and failed to pay wages in compliance with Section 17 of the *Act*. It is submitted that the employees requested that payments not be made until requested and that the company had agreed to accommodate the employees. No matter how reasonable this may seem in considering any one particular situation, it is clearly contrary to the intent of the legislation. The requirement to pay wages at least semi-monthly is a minimum requirement and cannot be waived even by mutual agreement.
12. The Employer also does not dispute that he failed to set-up a direct deposit system for his employees as required. The provisions in the *Regulation* for direct deposit of wages for farm worker employees was created to protect farm workers from undue exploitation and is a mandatory requirement whether or the employer considers it fair. The broad statements of intent in the *Act* cannot be used to refute the specific provisions of the legislation but may act in aid of interpretation. I cannot find any reasonable interpretation of the legislation that would allow the employer not to follow the plain meaning of the *Regulation*.
13. I cannot find any error in the analysis of the delegate in the Determination. There is no substantial basis upon which it can be said that the delegate failed to observe the principles of natural justice in rendering the Determination. Accordingly, I find that the appeal should be dismissed and the Determination confirmed.

ORDER

14. I order, under section 115 of the *Act*, that the Determination herein is confirmed.

John Orr
Member
Employment Standards Tribunal