

An appeal

- by -

Avtar Grewal

- 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: Sheldon Seigel

FILE No.: 2009A/056

DATE OF DECISION: June 29, 2009

DECISION

SUBMISSIONS

Avtar Grewal	on his own behalf
Ravi Sandhu	on behalf of the Director of Employment Standards

OVERVIEW

1. Avtar Grewal appeals a determination (the “Determination”) of the Director of Employment Standards (the “Director”), pursuant to section 112 of the *Employment Standards Act* (the “Act”).
2. A delegate of the Director found in a Determination dated July 30, 2008 that Mr. Grewal had contravened section 13 of the *Act*, as he acted as a farm labour contractor without being so licensed. The Director assessed an administrative penalty of \$500.00 under section 29 of the *Employment Standards Regulation* (the “Regulation”).
3. Mr. Grewal states that he was an employee of a nursery and in that capacity arranged for workers to attend to a contract for harvesting peas on a nearby farm.
4. Mr. Grewal’s appeal was outside of the time allowed for such appeals. Mr. Grewal submitted in a previous action that he did not receive notice of the determination or the deadline due to an incorrect address for service. By decision dated May 6, 2009 (BC EST # D040/09) Mr. Grewal’s late application was accepted. The Director and Mr. Grewal were allowed to make further submissions on the merits of the appeal and such submissions were received as indicated above.

ISSUE

5. Was Mr. Grewal a farm labour contractor or was he acting as the representative of the employer nursery?
6. Was the employer nursery a farm labour contractor licensed under the *Act*?

ARGUMENT AND ANALYSIS

7. Mr. Grewal argues that he was the manager of a nursery and the nursery purchased a crop of peas from a farmer. In his capacity as manager of the nursery, he sent labourers to harvest the crop. An inspection team visited the labourers and the farm operator at the farm and sought information as to the labourers’ employer. The inspection team concluded that Mr. Grewal was the employer.
8. The Determination indicates under the heading of INTRODUCTION AND BACKGROUND that Mr. Grewal provided the farm with contract labour. I find that this is a conclusion that should have resulted from an investigation of the issue of whether Mr. Grewal provided labour in his personal capacity or as manager of the nursery. The delegate makes no reference to any investigation into the nature of Mr. Grewal’s relationship with the nursery or whether the actions alleged were

within the range of things normally done in his capacity as a nursery employee. Further, the Director has apparently not questioned the farm owner as to whether the farm owner contracted with the nursery or Mr. Grewal for the provision of the workers.

9. The Determination states the relevant issue as being whether Mr. Grewal contravened the *Act* by operating as a farm labour contractor without being so licensed. There is no indication of whether the nursery was licensed as a farm labour contractor, or if that was considered an issue by the Director.
10. The Determination summarizes the EVIDENCE FROM INVESTIGATION as indicating that Mr. Grewal had brought the workers to the farm and that “when the team interviewed the workers... they stated that Grewal was their employer.” This appears to be a misstatement of the evidence provided to me, as will be described below. For this appeal, the Director submitted supporting documents including notes that state:

Avtar Grewal stated he had [undecipherable] bought the peas from the farmer before picking them. Picked by his employees so he could control quality.
11. I find that these notes could equally apply to Mr. Grewal in his personal capacity or Mr. Grewal as the manager of the nursery. Accordingly, these notes could be consistent with Mr. Grewal’s explanation. Further, the inspection team’s notes on questioning nine labourers does not support the Director’s summary that “they stated that Grewal was their employer.” I find the Director’s summary to be a significant misstatement of the evidence. The notes indicate that three of the nine labourers said they did not know who their employer was because they were new, two of the nine labourers said only that it was their first day, three of the nine labourers said nothing (or nothing was noted on the interview sheet) and one of the nine labourers said only that the farm owner picked him up. I note that based on the small amount of evidence provided to me the workers were asked questions that were non-technical and likely to result in the misinterpretation of their replies. Whether language barriers or other issues were the cause of this irregularity, I find the resulting data is highly suspect and the conclusions drawn from that data are unsupported.
12. Following his conclusions based on the inspection team interviews, the Director refers to the labourers as “Grewal’s employees.” I find that this is a conclusion not supported by reasons in the Determination. The central issue to the defence of this matter has been all but ignored by the Director on the face of the Determination. The respondent claims his actions were those of an employee of a nursery and that responsibility for those actions should properly be laid with his employer (nursery). A Determination must be sufficient on its face to explain the conclusions of the delegate. I find the central issues and the resulting findings in this matter are not reasoned or explained within the four corners of the Determination.
13. I therefore have insufficient evidence upon which to make any reasoned decision on this appeal and have no alternative but to send the matter back to the Director for further investigation of the relationship between Mr. Grewal and the nursery that employed him. The Delegate should thereafter be prepared to issue a new determination with reasons supporting the findings that make up the component parts of the contravention of the relevant legislation and regulation. Those findings need be based on evidence that has been subjected to some level of scrutiny for accuracy and reliability.

ORDER

- ^{14.} I order, pursuant to section 115 of the *Act*, that the Determination dated July 30, 2008 be cancelled and the issue inclusive of the question of whether Mr. Grewal was acting as an employee of the nursery be referred back to the delegate for reconsideration prior to the issuance of a new Determination.

Sheldon Seigel
Member
Employment Standards Tribunal