

An appeal

- by -

CC Career Contacts Ltd.
(the “Company”)

- 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.: 2010A/46

DATE OF DECISION: June 24, 2010

DECISION

SUBMISSIONS

Andrea Reid on behalf of CC Career Contacts Ltd.

Stephanie Bogaert on behalf of the Director of Employment Standards

OVERVIEW

1. CC Career Contacts Ltd. (the “Company”) appeals a Determination of the Director of Employment Standards issued March 1, 2010 (the “Determination”), pursuant to section 112 of the *Employment Standards Act* (the “*Act*”). The Determination was issued by a delegate of the Director of Employment Standards (the “delegate”) after an investigation that arose when the Employment Standards Branch received an application from the Company for a renewal of a licence to operate an employment agency.
2. In the Determination, the delegate found that at the time of her investigation, the Company was in operation as an employment agency as defined in the *Act*. The delegate also determined that there was no current valid licence for the Company at the location in question and that its last valid licence expired in 1999. In response to the delegate’s inquiries, Andrea Reid, the Director of the Company, informed the delegate that she was unaware that a licence was required under the *Act* or that one had been issued in the past and had expired. Ms. Reid disagreed that a penalty should be imposed on the Company.
3. The delegate pointed out that under section 12 of the *Act*, a person must not operate an employment agency unless that person is licensed to do so under the *Act*. She concluded that the Company had been operating as an employment agency without a valid licence since 2009, in contravention of the *Act*. The delegate found the date of contravention to be March 1, 2010, and imposed an administrative penalty of \$500.00 on the Company pursuant to section 29 (1) of the *Employment Standards Regulation* (the “*Regulation*”).
4. On behalf of the Company, Ms. Reid now appeals the Determination. In her appeal form Ms. Reid does not indicate the specific grounds of appeal outlined in section 112(1) on which she is relying; however, in her submissions she outlines several reasons why she is appealing. Relying on *Triple S. Transmission Inc.*, BC EST # D141/03, I will adopt a large and liberal view of the Company’s grounds of appeal and consider that the Company is appealing on the grounds that the Director erred in law or failed to observe the principles of natural justice in making the Determination. I note that in her submissions Ms. Reid does not refer to new evidence, so I will not consider that ground of appeal in my decision.
5. I am able to decide this appeal on the basis of the written materials submitted before me, namely: the Company’s appeal form and submissions; the submissions of the Director; and the Record forwarded by the Director under section 112(5) of the *Act*.

ISSUES

6. Did the delegate, on behalf of the Director, err in law or fail to observe the principles of natural justice in making the Determination?

ARGUMENT AND ANALYSIS

7. It should be noted that the onus is on the Company to establish the grounds of the appeal.

The Company's Submissions

8. Ms. Reid, on behalf of the Company, submits the following reasons for disputing the \$500.00 administrative penalty and appealing the Determination:
- Ms. Reid says that prior to March 1, 2010, the Company received no information or communication that it was in contravention of the *Act*. However, elsewhere in her submissions Ms. Reid also says that a couple of weeks after putting in an application for a licence, she received a call from the delegate informing her that the Company was in contravention of the *Act* and “[w]e were completely dumfounded by the conversation as we were unaware of the penalty or the renewal process”.
 - Ms. Reid says that the Company had no prior knowledge that an annual renewal notification is not issued to companies to inform them that their licence has expired. The Company would have renewed if they had known about it, or if a reminder notice had been issued. The Company did not intentionally avoid paying the annual renewal fee.
 - Ms. Reid says that because there were no reminders of the need to renew and no communication that it was in breach of the *Act*, the Company's perspective is that the Determination issuing the administrative penalty was unjust. Further, she says there has been no correspondence informing the Company of any process regarding the imposition of the penalty.

The Delegate's Submissions

- The delegate says that the Company's submissions put the onus on the Employment Standards Branch (the “Branch”) to contact all agencies and inform them of their obligation to be licenced under section 12 of the *Act*, and to renew their licence annually. However, the Branch does not generally audit employment agencies. It may contact a non-compliant agency if the agency is brought to its attention and the information verified, which is what happened with the Company.
- The delegate says that the *Act* does not oblige the Branch to contact agencies with prior warnings and reminders. It is incumbent upon every business operator to be aware of all of the statutory requirements under which it must legally operate.

Error of Law

9. The Tribunal uses the test outlined in *Britco Structures Ltd.*, BC EST # D260/03 to determine whether an error of law has been made. An error of law could result from:
- a) a misinterpretation or misapplication of a section of the *Act*;
 - b) a misapplication of an applicable principle of general law;
 - c) acting without any evidence;
 - d) acting on a view of the facts which could not reasonably be entertained; and

- e) adopting a method of assessment which is wrong in principle (in the employment standards context, exercising discretion in a fashion that is wrong in principle: *Jane Welch operating as Windy Willows Farm*, BC EST # D161/05).
10. There is nothing in the documents before me that indicate that the delegate made any error of law. The delegate, after a review of the Company's application for a licence, carried out an investigation which led to the Determination. The delegate properly found in the Determination that the Company was in breach of section 12 of the *Act* which reads as follows:
- 12 (1) A person must not operate an employment agency or a talent agency unless the person is licensed under this Act.
- (2) Subsection (1) does not apply to a person operating an employment agency for the sole purpose of hiring employees exclusively for one employer.
11. After finding that the Company was in breach of section 12 of the *Act*, the delegate properly applied section 29 of the *Regulation* which calls for non-discretionary penalties for contraventions of the *Act*. I conclude that the Delegate did not err in law in making the Determination.

Principles of Natural Justice

12. The principles of natural justice refer to the procedural rights to which a party to a dispute is entitled. These include the right to know the case against oneself; the right to have an opportunity to respond; the right to have the matter decided by an unbiased decision maker; and the right to be given reasons for the decision. The Company says the imposition of the administrative penalty was unjust because it did not receive any notice of the need for a licence and did not get an opportunity to rectify the situation before the penalty was imposed.
13. The Company's arguments do not convince me that the principles of natural justice were breached in this case. The submissions and the documents in the Record indicate that the delegate informed the Company that it was considered to be in breach of the *Act* because its licence expired in 1999 and it was required by law to have a valid employment agency licence while in operation. The delegate informed the Company of the non-discretionary penalty of \$500.00 for the contravention. The delegate invited the Company and specifically Ms. Reid to respond, and Ms. Reid responded with her views about why the penalty should not be imposed. The delegate then proceeded to write a Determination setting out the reasons for her decision. In my view, the principles of natural justice were followed by the delegate.

Disposition of the Appeal

14. The appeal is dismissed.

ORDER

15. Pursuant to Section 115 of the *Act*, I order that the Determination dated March 1, 2010, be confirmed.

Yuki Matsuno
Member
Employment Standards Tribunal