

An appeal

- by -

Sidhu Brothers Farm Contracting Ltd.  
(“Sidhu Brothers”)

- 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.:** 2009A/079

**DATE OF DECISION:** July 14, 2009

## DECISION

### SUBMISSIONS

Harwinder Sidhu	on behalf of Sidhu Brothers
Ravi Sandhu	on behalf of the Director of Employment Standards

### OVERVIEW

1. This is an appeal by Sidhu Brothers Farm Contracting Ltd. (“Sidhu Brothers”) pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination of the Director of Employment Standards (“the Director”) issued April 6, 2009.
2. Sidhu Brothers was a licensed farm labour contractor as defined by section 1 of the *Employment Standards Act* (the “*Act*”). It ceased to operate as a farm labour contractor on October 21, 2008 when it did not renew its licence.
3. On August 12, 2008, the Agricultural Compliance Team (the “team”) conducted a work site visit at Dhaliwal Farms in Pitt Meadows to ensure compliance with the *Act* and the *Employment Standards Regulation* (the “*Regulation*”). The team interviewed 29 Sidhu Brothers employees. On August 27, 2008, the team conducted a work site visit at Purewal Blueberry Farms in Abbotsford. A number of Sidhu Brothers employees were also working at this site.
4. On October 27, 2009, a delegate of the Director issued a Demand for Employer Records on Sidhu Brothers. The records were provided as requested.
5. After a review of the records, the delegate observed that Sidhu Brothers had not maintained payroll records as required by the *Act*. The delegate cross referenced the payroll records with the records from the work site visits and noted that a number of the employees at the team visits to Dhaliwal Farms and Purewal Blueberry Farm did not appear in the payroll records for August 12, 2008 or August 27, 2008.
6. The delegate noted also that Sidhu Brothers had not kept complete and accurate daily logs. He determined that the names on the logs provided on site were not consistent with the names on the records provided to the delegate as a result of the Demand.
7. On December 3, 2008, the delegate notified Sidhu Brothers of his findings and offered it an opportunity to respond to the observations. Sidhu Brothers was given until December 15, 2008 to provide any supporting documentation to the Branch. Sidhu Brothers’ response indicated that three specific individuals had never been employed by Sidhu Brothers and that the remaining employees were employed by 0751592 B.C. Ltd, Sidhu Brother’s other company. Sidhu Brothers also contended that the daily log that had been provided for inspection was not accurate as it was a log from a previous day.
8. After receiving the Sidhu Brother’s response, the delegate issued Demand for Employer Records on 0751592 B.C. Ltd. to determine whether or not the employees missing from Sidhu Brothers payroll were recorded on the numbered company’s payroll. An inspection of those records disclosed that 15 employees had not been recorded in either company’s payroll.

9. The delegate determined that Sidhu Brothers had contravened section 28 of the *Act* in failing to maintain payroll records for 15 employees. The delegate determined that Sidhu Brothers was aware of the requirements of the *Act* and *Regulation* having completed the farm labour contractor licensing process.
10. The delegate also found that Sidhu Brothers had contravened section 6 of the *Regulation* in failing to maintain a daily log which included the names of each worker. The delegate noted that Sidhu Brothers acknowledged that the log that was on the site at Purewal Blueberry Farm on August 27, 2008 was incorrect.
11. The delegate noted that Sidhu Brothers had contravened section 6 of the *Regulation* on two previous occasions and imposed a \$10,000.00 administrative penalty for the section 6 contravention and \$500 for the section 28 contravention.
12. The time period for filing an appeal expired May 14, 2009. The Tribunal received Sidhu Brothers' appeal on May 20, 2009. Mr. Sidhu also sought an extension of time in which to file the appeal, stating that he did not file the appeal on time because he was "out of town". As the Director did not object to extending the appeal deadline, the Tribunal extended the deadline to May 20, 2009.
13. The grounds of appeal are that the delegate failed to comply with the principles of natural justice in making the Determination.

## ISSUE

14. Did the delegate fail to observe the principles of natural justice in concluding that Sidhu Brothers had contravened section 6 of the *Regulation* and section 28 of the *Act*?

## ARGUMENT

15. Sidhu Brothers asserted that at the time of the farm team's visit to the Purewall Blueberry Farm on August 27, 2008, 300 to 400 people were working for four different farm labour contractors. It contends that the delegate incorrectly imposed the penalty because nine names in the log were not Sidhu Brothers employees, and for that reason they were not included on the payroll.
16. The delegate says that there were 28 workers working for two different farm contractors at the August 27, 2008 visit and submitted the records of the team's visit in support of his assertion. Further, the delegate says that the process at each visit is to approach the farm labour contractor on site and ask for the daily log. The log is photographed and attached to the record of the site visit. The delegate says that the log provided is incorrect as it did not list all the Sidhu Brothers employees on site that day. He also notes that the daily log provided on August 12, 2008 was also incorrect and that Sidhu Brothers says nothing about the Determination in respect of this conclusion in its appeal.
17. The delegate further notes that the explanation contained in the appeal documents for why the log was incorrect is significantly different from the one provided during the investigation. He submits that Sidhu Brothers is attempting to re-argue its case and asks that the appeal be dismissed.

## ANALYSIS

18. 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

19. The burden of establishing the grounds for an appeal rests with an Appellant.
20. Sidhu Brothers' appeal document does not describe how it was denied natural justice. In essence, Mr. Sidhu's appeal is that the delegate was wrong in his conclusions. 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" of 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."
21. I am not persuaded that the appeal has merit. There is nothing in the appeal submission that persuades me that the Determination is wrong in concluding that Sidhu Brothers contravened the *Act* and the *Regulation*.
22. The delegate offered Sidhu Brothers' the opportunity to respond to his findings and considered its response in determining that it had contravened the *Regulation*. The delegate also noted that Sidhu Brothers acknowledged that the log at one of the sites was incorrect, acknowledging one of the contraventions.
23. The facts do not support Sidhu Brothers' assertions. The log provided by Sidhu Brothers contained names that were not on the payroll. It is insufficient for Mr. Sidhu to merely assert that those individuals were not employees. He must provide some evidence, particularly when Sidhu Brothers' earlier response was that the individuals were employees of another company.
24. I find no error in the delegate's conclusion and dismiss the appeal.

## **ORDER**

25. I Order, pursuant to Section 115 of the *Act*, that the Determination, dated April 8, 2009, be confirmed, together with whatever interest may have accrued since the date of issuance.

---

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