

An appeal

- by -

Gitta Pedersen carrying on business as Poplar Grove Vineyard
(“Poplar Grove”)

- 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: Shafik Bhalloo

FILE No.: 2011A/67

DATE OF DECISION: July 13, 2011

DECISION

SUBMISSIONS

Gitta Pedersen on her own behalf carrying on business as Poplar Grove Vineyard

Ravi Sandhu on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) brought by Gitta Pedersen, carrying on business as Poplar Grove Vineyard (“Poplar Grove”), of a Determination that was issued on April 11, 2011, by a delegate of the Director of Employment Standards (the “Director”). The Determination found that Poplar Grove contravened Part 2, Section 13 of the *Act*, and imposed an administrative penalty on Poplar Grove under section 29(1) of the *Employment Standards Regulation* (the “*Regulation*”) in the amount of \$500.00.
2. Poplar Grove has filed an appeal of the Determination without identifying any of the available grounds of appeal under section 112(1) of the *Act* on its Appeal Form.
3. Poplar Grove is seeking a cancellation of the Determination.
4. Pursuant to section 36 of the *Administrative Tribunals Act* (the “*ATA*”), which is incorporated in the *Act* (s. 103), and Rule 17 of the Tribunal’s *Rules of Practice and Procedure*, the Tribunal may hold any combination of written, electronic and oral hearing. In my view, this appeal can be adjudicated on the basis of the section 112(5) “record”, the written submissions of the parties and the Reasons for the Determination.

ISSUE

5. The issue in this appeal is whether the Director erred in finding that Poplar Grove contravened section 13(3) of the *Act* by engaging the services of an unlicensed farm labour contractor.

FACTS

6. On February 24, 2011, the Employment Standards Branch Agricultural Compliance Team (the “Team”) became aware that Poplar Grove might have contracted labour from Earlco Holdings Ltd. (“Earlco”), a farm labour contractor unlicensed under the *Act*, on its vineyard located on Poplar Grove Road, Penticton, British Columbia. On the same date, a delegate contacted a representative of Poplar Grove, Gitta Pedersen (“Ms. Pedersen”). Ms. Pedersen confirmed that Poplar Grove contracted with Earlco for labour on its vineyard from January 2010 to December 2010.
7. Subsequently, on February 25, 2011, the Team sent to Poplar Grove, to the attention of Ms. Pedersen, a request for voluntary disclosure of information pertaining to all hired farm labour contractors contracted by Poplar Grove from July 30, 2009, to February 24, 2011, including all invoices, contracts and cancelled cheques for the said period. Poplar Grove was provided until March 4, 2011, to respond to this request. In its response, Poplar Grove produced a vineyard management agreement between Earlco and Ms. Pedersen for the provision by the former of labour and equipment to carry out various management duties on Poplar Grove’s vineyard. The agreement was for a period of approximately twelve (12) months, commencing

January 2010 and ending in December 2010, with the provision for its renewal “every year upon mutual agreement” between the parties.

8. On March 10, 2011, the Team sent Poplar Grove a letter indicating its preliminary finding that Poplar Grove appeared to have violated section 13(3) of the *Act*, which prohibits anyone from engaging the services of a farm labour contractor unless the farm labour contractor is licensed under the *Act*. More particularly, the Team explained in the letter that based on the contract between Ms. Pedersen and Earlco, it appeared that Poplar Grove had engaged Earlco for “contracted labour from January 2010 to December 2010” and Earlco, during this period, was not licensed under the *Act* to operate as a Farm Labour Contractor. The Team invited Poplar Grove to respond to its preliminary findings by March 21, 2011.
9. Ms. Pedersen, on behalf of Poplar Grove, responded in a letter dated March 19, 2011, which was received by the Team on March 21, 2011. In her response, Ms. Pedersen stated that Poplar Grove was “fully cooperative and compliant” when the Team, with respect to its investigation of Earlco, contacted her. She further indicated that she was surprised to later learn that it was Poplar Grove that was under investigation. She also opined in the letter that the investigation “is a complete waste of time” and she was appalled that the Government would spend “valuable time” and “taxpayer’s money” to conduct such investigation.
10. Ms. Pedersen also submitted in her response that Earlco was made “a scapegoat in this sad affair” and there were “numerous other businesses in the Okanagan operating as Farm labour contractors” that were unaware of the requirements of the *Act* and should be afforded education with respect to the requirements of the *Act*.
11. The Delegate, based on the response of Ms. Pedersen that she was unaware of the requirements of the *Act*, particularly section 13(3) which prohibited anyone from engaging the services of a farm labour contractor not licensed under the *Act*, determined that Poplar Grove contravened section 13(3) of the *Act* in engaging Earlco to provide labour on its vineyard.
12. In the result, the Delegate imposed on Poplar Grove an administrative penalty of \$500.00, pursuant to section 29 of the *Regulation*.

POPLAR GROVE’S SUBMISSIONS

13. Ms. Pederson presented written submissions in support of Poplar Grove’s appeal. The written submissions are very brief and I propose to delineate them verbatim below:

Grounds for appeal

1. I was contacted by Harmen Nandha in March 2011 re Earlco [*sic*] Ltd., who had worked here on my farm in 2010. I was told they were under investigation re violation of the Employment Standards Act. I was most compliant in providing information requested. Later I received note that I had been under investigation, which shows that I had provided information under completely false pretences.
2. I have been completely unaware of this act [*sic*] existing, as is the case of most farmers up in this area. To penalize us each with \$500.00 for an unknown violation seems completely out of context.
3. The Employment Standards Branch is well aware of the lack of information on the subject here in the Okanagan. They conducted an information session on April 14th, giving us a chance of gaining knowledge and asking relevant questions. As all of the Branch’s members were attending, it should be clear that very few people had much knowledge on the subject

beforehand. I then find it completely unacceptable to be fined for a violation that I never knew I committed.

SUBMISSIONS OF THE DIRECTOR

14. The Director submits that Poplar Grove is not disputing that it contravened the *Act* but, instead, it is arguing that it should not be penalized for its contravention because it was unaware of the *Act*'s requirement, namely, that it could not engage the services of a farm labour contractor unless the latter was licensed under the *Act*.
15. The Director notes that in light of the contravention of the *Act* on the part of Poplar Grove, section 29 of the *Regulation* mandates that a penalty must be imposed. The Director also submits that “a disincentive is needed to promote compliance with the Act and to prevent a repeat contravention” in this case. Accordingly, the Director submits that the appeal of Poplar Grove should be denied.

ANALYSIS

16. Section 112(1) of the *Act* sets out the limited grounds of appeal available to any party dissatisfied with the Director's determination under the *Act*. Section 112(1) provides:
 - 112 (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of 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.
17. The burden of proof is on the appellant to show on the balance of probabilities that the Determination under appeal ought to be varied or cancelled (Re: *World Project Management Inc.*, BC EST # D134/97; *Dusty Investments Inc. dba Honda North*, BC EST # D043/99).
18. I am mindful of the very instructive decision of the Tribunal in *Triple S Transmission Inc. (c.o.b. Superior Transmissions)*, BC EST # D141/03, that the Tribunal must not mechanically adjudicate an appeal based solely on a particular box the appellant has checked off (or not) on the Appeal Form and it must inquire into the nature of the challenge to the Determination to determine whether the challenge invokes one of the statutory grounds. However, in this particular case, it is clear that Ms. Pedersen's submissions on appeal do not invoke any of the available grounds of appeal in section 112(1) of the *Act*.
19. What is abundantly clear in Ms. Pedersen's appeal submissions is that she is seeking to re-argue the submissions she previously made to the Delegate before the Determination was made with a view to obtaining a more favourable result this time. More particularly, she is, in her submissions, repeating that she was unaware of the existence of the requirement in section 13(3) of the *Act* and does not dispute that Poplar Grove breached the *Act*. She simply feels that there is a “lack of information on the subject” in her region, in the Okanagan, and, in these circumstances, she feels that it is “unacceptable to be fined for a violation” when she did not know the requirements of the *Act*. She made this argument during the investigation by the Team and the Delegate in the Reasons considers it.

20. In my view, Section 112 of the *Act* does not create a right to re-hearing or re-investigation of the matter before the Delegate. I also add that I am in agreement with the Director that ignorance of the law is not an excuse or justification for violating the *Act*, nor is it a proper ground for appealing the Determination. Accordingly, I find that the appeal should be dismissed and the Determination confirmed.

ORDER

21. Pursuant to section 115 of the *Act*, I confirm the Determination dated April 11, 2011.

Shafik Bhalloo
Member
Employment Standards Tribunal