

**EMPLOYMENT STANDARDS TRIBUNAL**

In the Matter of an Appeal Pursuant to Section 112 of the  
*Employment Standards Act*, R.S.B.C. 1996, c. 113

- by -

Baldev Singh Dhugha  
Operating as D.N.C. Farm  
("Dhugha")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Ian Lawson

**FILE NO.:** 97/658

**DATE OF DECISION:** March 19, 1998

## DECISION

### OVERVIEW

This is an appeal by Baldev Singh Dhugha operating as D.N.C. Farm (“Dhugha”) pursuant so Section 112 of the *Act*. The Appeal is form a Determination issued by William G. Bull, a delegate of the Director of Employment Standards on July 31, 1997. The Determination found Dhugha had contravened Section 9(1) of the *Act* by employing children under 15 years of age without a permit.

Dhugha filed an appeal on August 27, 1997, which was beyond the time limit for filing appeals, but the Tribunal granted an extension of time to allow the appeal to be heard. The parties were given until December 2, 1997 to file written submissions. The appeal is now decided without an oral hearing, on the basis of written submissions and the record before the Tribunal.

### FACTS

Dhugha operates a blueberry farm in Pitt Meadows. On July 23, 1997, delegates of the Director inspected the farm, as Mr. Bull related in a letter to the Tribunal dated October 23, 1997:

A site visit was conducted by industrial relations officers on July 23, 1997. In which [*sic*] they encountered 2 children under the age of fifteen years old [*sic*] working along side their parents. Baldev S. Dhugha, farm owner, did not have a child permit. This is a direct violation of Section 9(1) of the *Employment Standards Act*.

These are the only facts put before the Tribunal in defence of the Determination. The Determination contains very little detail as to the circumstances of the contravention alleged against Dhugha. The following is the only reference in the Determination to the facts on which it is based:

On July 23, 1997, I found Baldev Singh Dhugha operating as D.N.C. Farm in contravention of Section 9(1) of the *Employment Standards Act* in that children under 15 were found working for Baldev Singh Dhugha operating as D.N.C. Farm without a permit at 19710 Dewdney Road, Pitt Meadows.

The lack of information contained in the Determination is regrettable, as the Tribunal (and possibly the employer) is put in the position of requesting detail from the Director’s delegate in order to determine the facts on which the delegate based the decision.

In response, Dhugha claims as follows:

My employee told me he had no baby sitter, so brought [*sic*] the kids with him not to pick berries but to keep them with him. Children being children, they were not going to stay at me [*sic*] place all day, so they started to play picking a few blueberries here and there.

### ISSUE TO BE DECIDED

This appeal requires me to decide whether Dhugha contravened Section 9(1) of the *Act* by employing children under the age of 15 years without a permit.

### ANALYSIS

Sections 9(1) and (2) of the *Act* read as follows:

9. (1) A person must not employ a child under 15 years of age without the director's permission.
- (2) A parent or guardian must not consent to a person employing a child under 15 years of age unless the person has obtained the director's permission.

In my view, this section creates an absolute prohibition against the employment of children under 15 without first obtaining permission. There is no saving or exception to this prohibition that could exempt an employer from liability because he or she did not knowingly employ children, or because the employer believed the children were older than 15 years of age, or because the children were actually at play when they performed work for the employer.

Even if I accept Dhugha's explanation of how it came to be that two children under 15 years of age were found picking blueberries on his farm, I must nevertheless conclude Section 9(1) has been contravened. Dhugha does not dispute that the children were picking berries, and further, he seems to admit that the children left his care to go work with their father in the fields. Berries picked by the children are no different from berries picked by their father, and berries picked in "play" are no different from berries picked by farmworkers. As farmworkers are paid a piece work minimum wage, Dhugha is employing these children in the same manner and on the same terms as he employees their father.

In view of the absolute liability faced by employers in these circumstances, children should be under strict supervision while accompanying parents working on a farm, and employers should ensure that children do not engage in work activities while on the premises.

Despite my concerns about the lack of information provided by the Director to substantiate the Determination under appeal, the contravention of Section 9(1) had been properly established. Dhugha's own submission confirms the Director's allegation and affords no valid defence.

**ORDER**

After carefully considering the evidence and argument, I find that the Determination made by William G. Bull is correct and the appeal should be dismissed. Pursuant to Section 115 of the *Act*, I order that the Determination dated July 31, 1997 is confirmed.

**Ian Lawson**  
**Adjudicator**  
**Employment Standards Tribunal**