

An appeal

- by -

JKJ Contracting Ltd.

- 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:** John M. Orr

**FILE No.:** 2007A/71

**DATE OF DECISION:** September 18, 2007

## DECISION

### OVERVIEW

1. This is an appeal by JKJ Contracting Inc. (“JKJ”) pursuant to S.112 of the *Employment Standards Act* (“the *Act*”) from a Penalty Determination dated June 01, 2007 issued by the Director of Employment Standards (“the Director”). The Determination found that JKJ contravened Section 6(1)(f)(i) of the *Employment Standards Regulation* (“the *Regulation*”). As the infraction was the first occurrence within 3 years the Director imposed the minimum penalty in the amount of \$500.00.
2. On May 15, 2007 a compliance team from the Employment Standards Branch conducted a site visit at a farm in Chilliwack. During the visit it was discovered that JKJ was using a vehicle to transport farm workers and investigation revealed that the vehicle was not listed with the Employment Standards Branch as required by the *Regulation*.
3. A delegate of the Director conducted a further investigation giving JKJ an opportunity to provide evidence and make submissions. The delegate concluded that at the time of the inspection JKJ had failed to file with the Director an up-to-date list of the registration numbers and licence numbers of each vehicle used by JKJ for transporting workers.
4. JKJ has appealed to the Tribunal requesting that the penalty determination be cancelled on the basis that the Director failed to observe the principles of natural justice in making the determination.
5. In the exercise of its authority under Section 36 of the Administrative Tribunals Act (“ATA”), which is incorporated into the Employment Standards Act (s. 103), and Rule 16 of the Tribunal’s Rules of Practice and Procedure, the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

### ANALYSIS

6. Section 112 of the *Act* provides that a person served with a determination may appeal the determination to the Tribunal on the following three 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.
7. JKJ submits that one of the principles of natural justice is “fairness” and that it is unfair to impose a penalty given the facts of this case which are not disputed.

## FACTS

8. On Saturday, May 12, 2007 JKJ purchased the vehicle to transport farm workers. JKJ was aware of the *Regulation* and the requirement to file an up-to-date list of such vehicles with the Director. JKJ attended an insurance agent and insured the vehicle. JKJ requested the insurance agent to fax a copy of the vehicle registration and insurance to the Director. JKJ believed that this would be received on Monday the 14<sup>th</sup> of May.
9. Early on Tuesday morning, May 15<sup>th</sup>, JKJ accepted a contract to provide workers to a farm in Chilliwack. At the farm JKJ met with a member of the compliance team and was advised that the vehicle registration and insurance had not been received by the Director.
10. JKJ discovered that the agent who had promised to fax the vehicle registration and insurance did not work on Mondays and that the document had not been sent to the Director. At 2:19 p.m. on Tuesday May 15<sup>th</sup> a copy of the owner's certificate of insurance and vehicle licence was faxed to the Branch by the insurance agent. It was stamped "ENTERED". The document confirms that the insurance and registration had been completed on May 12<sup>th</sup> as stated by JKJ.

## APPELLANT'S SUBMISSION

11. The appellant submits that they relied in good faith upon the insurance agent's agreement to fax the registration and insurance to the Director. The appellant says that JKJ has honoured the purpose of the regulation to ensure worker safety by purchasing a new vehicle and that the unintended and innocent mistake in not providing the registration until Tuesday afternoon should not, in all fairness, result in a \$500.00 fine. The appellant points to the prior compliance by JKJ and that there have been no previous infractions.
12. The appellant submits that it is a breach of natural justice to impose a fine in the circumstances of this case.

## DIRECTOR'S SUBMISSION

13. The Director's delegate submits that the appellant admits the fact that the vehicle was used before an up-to-date list of vehicle registrations was filed with the Director. It is submitted that it is the duty of the contractor to ensure that the list is up-to-date and it is not sufficient to rely on a third party such as an insurance agent to file the document.

## DECISION

14. It is easy to understand, in this case, the appellant's sense that they have been treated unfairly. The evidence is clear that the vehicle was properly registered and insured and the vehicle was only working for a few hours before the filing was completed as required. It is easy to understand how the appellant might feel that a \$500.00 fine is overly punitive under the circumstances.
15. That being said, the appellant was well aware of the *Regulation* and had completed the licensing requirements as a farm labour contractor. The appellant is knowledgeable about the purpose of the

*Regulation* and the need to ensure the safety of vulnerable farm workers. The appellant had three days in which the registration could have been sent to the Director.

16. There is no evidence to explain why the appellant could not have faxed the document themselves to the Director on the Saturday when the vehicle was purchased and registered. Even if the insurance agent agreed to fax the document the appellant could have waited and watched while the document was faxed and requested a confirmation that it had been sent and received. Although the Branch may have been closed there is nothing to suggest that a fax would not have been received. Likewise, the appellant could have personally faxed a copy on either the Sunday or Monday before accepting the contract on Tuesday morning. Even on the Tuesday morning before commencing to transport any workers the appellant should have ensured and confirmed that the requisite filing had been completed.
17. Given that the appellant concedes that they had not filed with the Director an up-to-date list of the registration numbers and licence numbers of vehicles used for transporting workers, there is no basis to find that the infraction did not occur as found by the delegate.
18. JKJ submits that the amount of the fine imposed is unreasonable in the circumstances. However, if the Director determines that a contravention has occurred a fine of \$500.00 is prescribed by S.29 of the *Regulation*. The amount of the fine is not discretionary.
19. I cannot find any error in the analysis of the delegate in the determination. There is no substantial basis upon which it can be said that the delegate failed to observe the principles of natural justice in rendering the determination. Accordingly, I find that the appeal should be dismissed and the determination confirmed.

## **ORDER**

20. I order, under section 115 of the *Act*, that the Determination herein is confirmed.

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**John M. Orr**  
**Member**  
**Employment Standards Tribunal**