

An appeal

- by -

Grewal Berry Farm Inc.

- 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.: 2006A/86

DATE OF DECISION: August 30, 2006

DECISION

SUBMISSIONS

Surjit Grewal on behalf of Grewal Berry Farm Inc.
Ravi Sandhu on behalf of the Director

OVERVIEW

1. This is an appeal by Grewal Berry Farm Inc. (“Grewal”) pursuant to S.112 of the *Employment Standards Act* (“the Act”) from a Penalty Determination dated June 22, 2006 issued by the Director of Employment Standards (“the Director”). The Determination found that Grewal contravened Section 13 of the Act and Section 29(3) of the *Employment Standards Regulation 369/95* (“the Regulation”). The Director imposed a penalty in the amount of \$500.00.
2. A worker complained to the *Employment Standards Branch* that he had worked at Waheguru berry farm (“Waheguru”) and had not been paid. A delegate of the Director investigated and found that Grewal had provided the worker to Waheguru and that Grewal had invoiced Waheguru for the labour performed by the worker.
3. As a result of the investigation the unpaid wages were then paid directly by Waheguru to the Director. However Grewal denied dispatching the farm worker.
4. The delegate concluded that in fact the worker had been dispatched by Grewal. The delegate noted in particular that Section 29(3) of the *Regulation* states that if an employer dispatches an employee from one location to another worksite, a contravention that occurs at that other worksite is considered to be a contravention at the location from which the employee was dispatched. Although the worker was working at a different location when the contravention occurred, for the purpose of Section 29(1) of the *Regulation* the contravention is considered to have occurred at the location the worker was dispatched from, in this case Grewal Berry Farm. As a result of this contravention the delegate imposed a \$500.00 penalty.
5. Grewal has appealed to the Tribunal on the basis that the invoice submitted was not for labour but for machine work and that no labour was supplied by Grewal to Waheguru.
6. In the exercise of its authority under section 103 of the Act, which incorporates section 36 of the *Administrative Tribunals Act*, 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

7. 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.
8. It is not clear on which of these grounds the appeal is properly founded. Grewal has checked a box on the appeal form indicating that the Director has “erred in law” but no error of law has been identified. Nevertheless, in my opinion the Tribunal should look at the substance of the appeal and not be limited to which of the three grounds has been ‘checked’ by the appellant – especially when the appellant is not represented by counsel.
9. It appears from the submission that Grewal believes that the delegate has erred in his findings of fact. He essentially simply reiterates his argument that was made to the delegate at the time of the investigation. The delegate addressed the argument in his reasons for the Determination.
10. The delegate noted that Grewal’s first response to the matter was that the invoice was issued for mechanical harvesting (and not for labour). However, later Grewal stated that the berry harvested was berry that they had already purchased. No evidence of the purchase was provided. The owner of the Waheguru berry farm where the work was done was an independent third party who had nothing to benefit from any decision and the invoice supported his statements. The delegate noted their conflicting stories and he then analysed the circumstances and made findings of credibility. The delegate used the appropriate method and legal analysis in his findings and such findings of fact are not appealable under the legislation as it is presently written.
11. In terms of any other grounds of appeal, Grewal has not suggested that the Director failed to observe the principles of natural justice in making the determination. Grewal does not suggest that evidence has become available that was not available at the time the determination was being made.
12. 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 made an error in law or 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

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

John M. Orr
Member
Employment Standards Tribunal