

An appeal

- by -

Gary's Labour and Supply 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: Carol Ann Hart

FILE No.: 2007A/79

DATE OF DECISION: October 9, 2007

DECISION

SUBMISSIONS

Raghibir Singh Hothi	on behalf of Gary's Labour
Ravi Sandhu	on behalf of the Director

OVERVIEW

1. This is an appeal by Gary's Labour Labour and Supply Ltd. ("Gary's Labour"), pursuant to Section 112 of the *Employment Standards Act* ("the Act"), of a Determination of the Director of Employment Standards ("the Director").
2. In the Determination and Reasons for the Determination issued on July 20, 2007 (the "Determination"), the delegate for the Director concluded that Gary's Labour had contravened section 6 of the *Employment Standards Regulation*, BC Reg. 396/95 (the "*Regulation*") by failing to make a daily log available for inspection at the work site. An administrative penalty of \$500.00 was imposed in accordance with section 29(1) of the *Regulation*.
3. Gary's Labour contends that the delegate for the Director failed to observe the principles of natural justice in making the Determination.
4. 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.

ISSUE

5. The issue in this case is whether the delegate for the Director failed to observe the principles of natural justice in making the Determination.

THE FACTS

6. According to the findings in the Determination, Gary's Labour was licensed under the *Employment Standards Act* as a farm labour contractor on November 16, 2004 for 65 employees. The license is valid until November 16, 2007.
7. On June 26, 2007, Gary's Labour was providing contract labour to Bow Chong Farms for corn weeding. The Employment Standards Branch Agricultural Compliance Team went to Bow Chong Farms in Delta, B.C. on that day to conduct a site visit to ensure compliance with the *Employment Standards Act* and *Regulation* with regard to farm labour contractors, producers and farm workers.
8. Section 6(4) of the *Regulation* provides that a farm contractor is required to keep a daily log at the worksite, and make it available for inspection by the Director.

9. In the Determination, the delegate for the Director concluded, following an investigation, that Gary's Labour had contravened section 6(4) of the *Regulation* because there was no farm contractor daily log available for inspection at the work site. The Director's delegate ordered Gary's Labour to cease contravening section 6 of the *Regulation*. The delegate further imposed an administrative penalty in the amount of \$500.00 for the contravention of the *Regulation* in accordance with section 29 of the *Regulation*.

ARGUMENT

10. In his written submission filed with the appeal, Mr. Hothi indicated that he did not agree with the Director's decision. He noted that at the time of the inspection, he was in possession of the daily log, but he was not at the worksite to make it available for the investigation. Mr. Hothi maintained that he was not at fault with respect to the Determination issued against Gary's Labour.
11. The Director's delegate submitted that the Determination should be upheld because argument made by the appellant on appeal was the same argument which was presented to the Director before the Determination was rendered.

ANALYSIS

12. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
- (a) the Director erred in law;
 - (b) the Director failed to observe the principles of natural justice in making the determination; or
 - (c) evidence has become available that was not available at the time the determination was being made.
13. As set out above, Gary's Labour has alleged in this appeal that the Director failed to observe the principles of natural justice. In general terms, natural justice requires that a party know the case it is required to meet, and be given a fair opportunity to be heard and to answer the case made against it: See *Kaloti (c.o.b. National Courier Service)*, BC EST#D232/99 and *Select Introductions Inc.*, BC EST #D045/05.
14. The party alleging an error of natural justice has the burden of proof, and evidence must be provided to support that allegation. (see *Dusty Investments Inc. dba Honda North*, BC EST #D043/99). An appeal to the Tribunal is not a re-investigation of the complaint. It is a proceeding to decide whether there is any error in the Determination.
15. There is no evidence of an infringement of the principles of natural justice on the Appeal Form, or on the material filed with this appeal. Mr. Hothi sent a letter (undated) to the Employment Standards Tribunal by fax on July 20, 2007 with respect to the appeal. None of the information in that document describes a denial of natural justice. Mr. Hothi's letter explains why he disagrees with the decision made by the delegate, and believes the conclusion in the Determination was erroneous and unfair.

16. Section 77 of the *Act* provides that if an investigation is conducted, the Director must make reasonable efforts to give a person under investigation an opportunity to respond. In the Determination, the delegate outlined the process undertaken by the Employment Standards Branch Agricultural Team during the investigation at the work site on June 26, 2007. The delegate noted that Mr. Hothi, whom he referred to as “*the owner*” of Gary’s Labour, was not present at the work site at the time. Efforts were made during the investigation to see whether any person at the work site had the daily log in their possession. The delegate indicated that an Employment Standards Officer then telephoned Mr. Raghbir Hothi, and Mr. Hothi had advised that he had the daily log with him, but was too far from the work site to return to produce the log for inspection.
17. On June 27, 2007, the day following the work site visit, a letter was sent to Gary’s Labour from a delegate for the Director setting out the findings of the site visit, and indicating that section 6(4) of the *Regulation* had apparently been contravened. The delegate provided Gary’s Labour with an opportunity to respond in writing prior to the Determination being issued. A written reply was submitted to the Employment Standards Branch for Gary’s Labour by Satwinder Hothi on July 3, 2007. In the Determination, the delegate outlined the submissions contained in that letter.
18. The Determination and the documentation on the file show that Gary’s Labour was given a reasonable opportunity to respond during the investigation. I have further concluded that there was evidence to support the findings and conclusions reached by the delegate for the Director. It is undisputed that the daily log was not at the worksite, and Gary’s Labour did not make the daily log available for inspection by the Director.
19. The appeal does not disclose any evidence to support a finding that Gary’s Labour was denied natural justice. I therefore deny the appeal.

ORDER

20. Pursuant to Section 115 of the *Act*, the Determination dated July 20, 2007 is confirmed.

Carol Ann Hart
Member
Employment Standards Tribunal