

An appeal

- by -

BSA Enterprises Ltd.
("BSA")

- 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

TRIBUNAL MEMBER: Ian Lawson

FILE No.: 2004A/21

DATE OF DECISION: May 26, 2004

DECISION

SUBMISSIONS

Avtar Sumal

On behalf of BSA Enterprises Ltd.

Sharn Kaila

On behalf of the Director of Employment Standards

OVERVIEW

This is an appeal by BSA Enterprises Ltd. ("BSA") pursuant to section 112 of the *Act*. The appeal is from Determination ER#112262 issued by Sharn Kaila, a delegate of the Director of Employment Standards, on January 5, 2004. The Determination found BSA to have contravened s. 6 of the *Employment Standards Regulation*, and ordered BSA to pay an administrative penalty of \$500.00. BSA filed an appeal on February 10, 2004. The appeal is now decided without an oral hearing, on the basis of written submissions and the record before the Tribunal.

FACTS

BSA is a farm labour contractor, which was licensed to provide this service under the *Employment Standards Act* on June 16, 2003. As a licensed contractor, BSA satisfied the Director that it had sufficient knowledge of the *Act* and *Regulation*, and it had been a licensed contractor for two previous years. The Director has established an Agriculture Compliance Team, which inspects work sites to ensure farm labour contractors are complying with the *Act* and *Regulation*. On November 20, 2003, the Agriculture Compliance Team visited a work site in Abbotsford, B.C., where BSA was providing contract labour to Townline Growers (1994) Ltd. for harvesting Brussels sprouts.

The Compliance Team found BSA had transported employees to the worksite in a van located on the site, but no representative of BSA was present other than the employees. The Team spoke with the employees and with a supervisor employed by Townline Growers Ltd., and concluded there was no daily log on the work site as is required by section 6(4) of the *Regulation*. As a result of this finding, the delegate sent a letter to BSA on December 4, 2003 which included the following:

BSA appears to have contravened Section 6(4) of the Regulation by failing to make a daily log available for inspection.

Should you disagree with these findings, please provide the Delegate of the Director all documents on which you rely to support your position. To be considered, your written reply must be received by this office no later than December 18, 2003.

Should you fail to reply, in writing, by the above date, a determination shall be issued, without further notice to you based on the information on file. A penalty will also accompany the issuance of a determination.

BSA made no reply to this letter, and the Determination was issued.

In its appeal submission, BSA says that its principal, Avtar Sumal, was at another work site when the Compliance Team arrived. BSA says it did have a log book on site, but it was located in the van that was used to transport its employees. BSA says it acknowledges receiving the delegate's letter, but it was not received in time to make a reply. Mr. Sumal attended the delegate's office on an unspecified date after the deadline and informed him that the log book had been in the van at the work site, but was told the Determination had already been made. In its Appeal Form, BSA states that the Director erred in law and failed to observe the principles of natural justice, and seeks to have the Determination cancelled.

ISSUE

Does the Determination contain any error of law or failure to observe the principles of natural justice?

ANALYSIS

Section 6(4) of the *Regulation* reads as follows:

- 6 (4) A farm labour contractor must keep at the work site and make available for inspection by the director a daily log that includes
- (a) the name of each worker,
 - (b) the name of the employer and work site location to which workers are supplied and the names of the workers who work on that work site that day,
 - (c) the dates worked by each worker,
 - (d) the fruit, vegetable, berry or flower crop picked in each day by each worker, and
 - (e) the volume or weight picked in each day by each worker.

Section 29(1) of the *Regulation* states in part:

- 29 (1) Subject to section 81 of the Act and any right of appeal under Part 13 of the Act, a person who contravenes a provision of the Act or this regulation, as found by the director in a determination made under the Act, must pay the following administrative penalty:
- (a) if the person contravenes a provision that has not been previously contravened by that person, or that has not been contravened by that person in the 3 year period preceding the contravention, a fine of \$500;
 - (b) if the person contravenes the same provision referred to in paragraph (a) in the 3 year period following the date that the contravention under that paragraph occurred, a fine of \$2,500;

The delegate imposed a fine of \$500.00, even though BSA was found to have committed previous contraventions of the *Regulation*, including a contravention of section 6(4) in September, 2003.

There appears to be no dispute that the Agriculture Compliance Team did not locate a daily log when it inspected the BSA work site on November 20, 2003. There is equally no dispute that the reason the log could not be found was that BSA's principal was at another work site when the Team arrived. The daily log is an important tool in ensuring workers have the minimum standards in their employment which the Legislature established in the *Act*. Without access to the daily log, the Compliance Team was no doubt hindered in its ability to ensure these minimum protections were in place for BSA's employees on this date.

The delegate's decision to issue a letter to invite BSA's explanation was reasonable and fair in these circumstances. BSA's failure to respond to the letter, however, has resulted in the Determination being issued and the penalty being imposed. Had BSA responded promptly with the explanation it has presented, the Determination may not have been issued. However, in these circumstances I can find no error or failure to observe the principles of natural justice in the Determination under appeal, and BSA has presented no evidence or argument that could support these grounds of appeal. The delegate imposed a \$500.00 fine when the *Regulation* authorized the imposition of a fine five times greater. In these circumstances, the appeal must be dismissed.

ORDER

Pursuant to section 115(1) of the Act, the appeal is dismissed and Determination ER#112262 issued on January 5, 2004 is confirmed.

Ian Lawson
Member
Employment Standards Tribunal