

An appeal

- by -

M.G.B. Ent. Ltd.
("MGB")

- 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 L. Roberts

FILE No.: 2007A/101

DATE OF DECISION: October 26, 2007

DECISION

SUBMISSIONS

Gurbhej Singh Brar

on behalf of M.G.B. Ent. Ltd.

Karry Kainth

on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal by M.G.B. Ent. Ltd. (“MGB”), pursuant to Section 112 of the *Employment Standards Act* (“the Act”), against a Determination of the Director of Employment Standards (“the Director”) issued August 2, 2007.
2. After conducting a worksite visit, the Director’s delegate determined that MGB had failed to maintain and make available a daily log at a worksite. The delegate found that MGB had contravened section 29(1) of the *Employment Standards Regulation, B.C. Reg. 396/95* (the “Regulation”) in failing to meet a condition of its farm labour contractor license. As this was MGB’s second contravention, the Director imposed a \$2,500.00 administrative penalty on MGB.
3. MGB says that the Director’s delegate failed to observe the principles of natural justice in making the Determination and seeks to have the Determination cancelled.
4. 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 provide that the Tribunal may hold any combination of written, electronic and oral hearings. (see also *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575). Although MGB sought an oral hearing, I conclude that this appeal can be adjudicated on the written submissions of the parties. This appeal is decided on the section 112(5) “record”, the submissions of the parties, and the Reasons for the Determination

FACTS AND ARGUMENT

5. The facts as set out by the delegate are as follows.
6. MGB is a licensed farm labour contractor under the Act. On March 9, 2007, MGB was issued a farm labour contractor license permitting them to employ a maximum of 55 employees. The license expires March 9, 2008.
7. On July 5, 2007, the Employment Standards Agriculture Compliance Team conducted a worksite visit at Bergen Farms to ensure that Farm Labour contractors were in compliance with the Act and Regulations. MGB provided contract work to Bergen Farms for raspberry harvesting. As the owner of MGB, Gurbhej Brar, was not present at the time of the site visit, the delegate spoke with Mr. Brar’s father, Makhan Brar. Mr. Brar advised the delegate that there was no daily log at the worksite, but there were 15 employees on site. The delegate explained to Mr. Brar that MGB was required to leave a daily log, or a list of all the

workers working for MGB, at the site. The delegate then interviewed the 15 MGB employees. None of them had the daily log.

8. On July 10, 2007, the delegate sent MGB a letter asking it to respond to the allegation that it had failed to produce a daily log. A response was required by July 20, 2007. On July 23, 2007, MGB sent a letter stating that on the day of the Branch Team's visit, one of the employees, Balwinder Gill had the daily log, but the delegate had not spoken to him as he was picking raspberries at the time of the visit.
9. The delegate concluded that MGB had failed to make a daily log available for inspection, contravening section 6(4) of the *Regulation*. The delegate noted that Makhan Brar told the delegate that the daily log was not at the work site and that there were 15 employees at the site. The delegate noted that the team interviewed 15 employees, none of whom identified themselves as Gill. None of those 15 employees had the daily log.
10. The delegate noted that the wording of section 6(4) required the contractor's responsibility to keep the daily log at the worksite and make it available for inspection. Further, the delegate notes that MGB was aware of the requirements of the *Act* and *Regulation* because it had been through the farm labour contractor licensing process and MGB's principal had written an exam on the licensing requirements.
11. The delegate found MGB in contravention of the *Regulation*. In accordance with section 29(3), the delegate imposed a penalty of \$2,500 as MGB had one prior contravention.
12. In his appeal document, Mr. Brar says that he had the "log sheet available" but that the team "never asked the person who had it".
13. The delegate submits that the employer had the opportunity to respond to the team's findings and did so. The delegate further submits that the employer's response confirmed the allegations. The delegate seeks to have the Determination upheld.

ISSUES

14. Whether the delegate failed to observe the principles of natural justice in making the Determination.

ANALYSIS

15. 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
16. The burden of establishing the grounds of the appeal rests with an appellant.

Failure to Observe the Principles of Natural Justice

17. Principles of natural justice are, in essence, procedural rights that ensure parties a right to be heard by an independent decision maker.
18. There is nothing in the appeal documentation that establishes a denial of natural justice. Mr. Brar was told of the allegations and given an opportunity to respond. Although Mr. Brar's response was provided to the delegate after the deadline for providing that response, it was nevertheless considered by the delegate in arriving at his conclusion. In that response, Mr. Brar contended, as he does on appeal, that the team member failed to ask the person who had the daily log for it. There is nothing in the appeal documentation identifying the person who allegedly had the daily log. In his response to the allegations, Mr. Brar suggested it was a Mr. Gill. The delegate had no record of a Mr. Gill on the site, and Mr. Brar's agent, his father Makhan Brar, did not identify him as the person who had the daily log. There is nothing in the appeal documentation suggesting that this information is incorrect.
19. It is the employer's responsibility to structure its affairs, including records maintenance, in accordance with the *Act*. (see *478125 B.C. Ltd. v. British Columbia (Director of Employment Standards)* (BC EST #D 279/98)). The employer does not dispute that it is aware of the specific requirement of having a daily log on the work site, and I infer that it is by virtue of the fact MGB has had a prior contravention.
20. The language of section 6(4) makes it clear that it is the farm labour contractor's responsibility to make the daily log available for inspection, not the Farm Labour Contractor Team's job to seek it out. (see *Dhillon Labour Contractors Ltd.*, BC EST #D005/06). There is no dispute that the employer failed to provide the daily log when asked.
21. The appeal is dismissed.

ORDER

22. I Order, pursuant to Section 115 of the Act, that the Determination, dated August 2, 2007, be confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal