

An appeal

- by -

GDMK Enterprises Ltd.
("GDMK")

- 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: Shafik Bhalloo

FILE No.: 2009A/109

DATE OF DECISION: October 15, 2009

DECISION

OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Gurpartap Singh Dhillon (“Dhillon”) on behalf of GDMK Enterprises Ltd. (“GDMK”) of a determination issued against the latter on July 15, 2009 (the “Determination”) by a delegate of the Director of Employment Standards (the “Director”). The Determination found that GDMK, as a farm labour contractor, contravened sections 6(1)(f) and 6.1 of the *Employment Standards Regulation* (the “*Regulation*”) for failing to file an up-to-date list of the registration numbers and licence numbers of a vehicle used for transporting employees and to post within the same vehicle a safety notice provided by the Director respecting vehicle and passenger safety requirements respectively. As a result, the delegate ordered GDMK to cease contravening sections 6(1)(f) and 6.1 of the *Regulation* and to comply with all the requirements of the *Act* and *Regulation*. The Director also imposed two administrative penalties on GDMK in the amounts of \$2,500.00 each pursuant to section 29 of the *Regulation*, as this was GDMK’s second contravention of sections 6 and 6.1 of the *Regulation* within three years.
2. GDMK appeals the Determination on the sole ground that the Director failed to observe the principles of natural justice in making the Determination.
3. As a remedy, GDMK is seeking a cancellation of the Determination.
4. Pursuant to section 36 of the *Administrative Tribunals Act* (the “*ATA*”), which is incorporated in the *Act* (s.103) and Rule 17 of Tribunal’s *Rules of Practice and Procedure*, the Tribunal may hold any combination of written, electronic and oral hearings. In my view, the issues in this appeal can be properly adjudicated based on the section 112(5) “record”, the written submissions of the parties and the Reasons for the Determination.

ISSUE

5. Did the Director fail to observe the principles of natural justice in determining that GDMK contravened sections 6 and 6.1 of the *Regulation*?

FACTS

6. GDMK is a licensed farm labour contractor under the *Act* and permitted, under its farm labour contractor license issued on April 5, 2007, to employ a maximum of 83 employees in its business enterprise.
7. On June 17, 2009, the Employment Standards Branch Agriculture Compliance Team (the “Team”) and the Commercial Vehicle Safety Enforcement conducted roadside checks of vehicles used by farm labour contractors to transport farm workers with a view to ensuring compliance by farm labour contractors with the *Act* and *Regulation*.
8. During its roadside checks, the Team had the occasion to speak with Mr. Harpreet Gill (“Gill”), the driver of a brown Chevrolet Venture, license plate 289 FMR. Gill confirmed to the Team that the vehicle in question was owned by GDMK and was being used to transport workers. The Team searched the vehicle for the safety notice required under section 6.1 of the *Regulation* but did not find such notice within the vehicle. The team also discovered that GDMK had failed to register the vehicle in question contrary to section 6(1)(f) of the *Regulation*.

9. Subsequently, on June 23, 2009, the Branch wrote a letter to GDMK, addressed to the attention of Dhillon, delineating the Team's investigative findings and requesting GDMK's response by July 6, 2009. On June 26, 2009, Dhillon, on behalf of GDMK, responded in writing via fax to the Branch. In his written response, Dhillon stated that he previously, on July 21, 2008, faxed to the Branch the registration documents for the vehicle in question. He attached the said fax with his response. He also submitted the safety vehicle notice was posted in the backside of the driver's seat but did not know why the Team was not able to find it.
10. After receiving Dhillon's response, on July 15, 2009, the delegate issued the Determination confirming GDMK's breaches of sections 6 and 6.1 the *Regulation*. In the Reasons for the Determination, the delegate stated, with respect to the failure of GDMK to post the vehicle safety notice, the Team thoroughly inspected the vehicle in question "including the rear side of the driver's seat" and found no safety notice posted in the vehicle. With respect to the finding of failure of GDMK to file with the Director the registration and license plate number of the vehicle used for transporting farm workers, the delegate noted that the fax Dhillon sent to the Branch on July 21, 2008 contained registration documents for two different vehicle license plates, namely, AA6286 and 2999LK and not the vehicle checked or investigated by the Team and driven by Gill with the plate number 289 FMR.
11. As this was GDMK's second infraction under sections 6 and 6.1 of the *Regulation*, the Director imposed and administrative penalty of \$2,500.00 for each infraction pursuant to section 29 of the *Regulation* for a total administrative penalty of \$5,000.00.

SUBMISSIONS OF GDMK

12. Dhillon, on behalf of GDMK, submits a single page of written submissions in the appeal of the Determination. Because of the brevity of those submissions, I propose to set them out verbatim below.

Amandeep Jassal
Delegate of the Director of
Employment Standards

July 22, 2009

GDMK Enterprise Ltd.
12479 64 Ave
Surrey BC
V3W 1W8

Dear Amandeep Jassal,

Re: ER#139-884

We got a letter in the mail stating that GDMK Enterprise has been fined \$5,000. Having provided you with all the information and being a small were not able to pay this fine.

On July 21st, 2008, I sent all the documents of my vehicle to Amar Gill. Sir, I am not sure why you did not receive these documents in fax. I also sent evidence that I had sent these documents to you last week. Why were these documents not received? I am confident that somebody at your office received these documents and never sent an acknowledgement of receipt. This was clearly Amar Gill's mistake.

The Van [sic] made in this claim is a family vehicle and has never been used to transport workers. The driver, Harpreet was extremely nervous when she used the vehicle and thought the paper was suppose in the front [sic] but in fact the paper was in the back seat. This was clearly a misunderstanding.

GDMK is a very small company and we are not able to pay \$5,000. The income received from GDMK is only enough to support my family and pay workers. I will be forced to shut the company down. There are lot of foreign workers in many green houses and it's almost impossible to find work for my workers. I hope you can reconsider your decision based on these grounds.

Yours Sincerely,

Gary Dhillon

GURPARTAP

SUBMISSIONS OF THE DIRECTOR

13. The Director, in response to GDMK's appeal, argues that GDMK is essentially repeating the arguments made to the delegate before the Determination was made and the delegate already considered and addressed all of these arguments before issuing the Determination.
14. The Director further submits that GDMK was privy to the requirements of the *Act* and the *Regulation* when it participated in the process to obtain licensing as a farm labour contractor. The Director further submits that a "disincentive is needed to promote compliance with the *Act* and to prevent a repeat contravention" on the part of GDMK. Therefore, argues the Director, GDMK's appeal should be denied.

LEGISLATION

15. The pertinent sections of the legislation governing this appeal are sections 112(1)(b) of the *Act* and sections 6(1)(f) and 6.1 of the *Regulation* which are set out hereunder.
16. Section 112(1)(b) of the *Act* provides:

Appeal of director's determination

112 (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:

...

(b) the director failed to observe the principles of natural justice in making the determination;

17. Sections 6 and 6.1 of the *Regulation* provide:

Duties of farm labour contractors

6 (1) A farm labour contractor must do all of the following:

...

(f) file with the director

- (i) an up-to-date list of the registration numbers and licence numbers of each vehicle used by the farm labour contractor for transporting employees, and
- (ii) if the vehicle is owned by the farm labour contractor, copies of the inspection certificate and other records that must be maintained under section 25 of the Motor Vehicle Act Regulations.

Additional duties of farm labour contractors — posting safety notices in vehicles

6.1 (1) A farm labour contractor must, in every vehicle used by the farm labour contractor to transport employees, post a notice provided by the director respecting vehicle and passenger safety requirements under the *Motor Vehicle Act* and the *Workers Compensation Act*, including driver, seating and seat belt requirements.

(2) A notice required to be posted under subsection (1) must be displayed in one or more positions in the vehicle that are clearly visible to the driver or operator of the vehicle and employees riding in the vehicle.

ANALYSIS

18. As indicated previously, GDMK, based on section 112(1)(b) of the *Act*, alleges that the Director breached the principles of natural justice in making the Determination. In *Re 607730 BC Ltd. (cob English Inn and Resort)* [2005] B.C.E.S.T.D. No. 55(QL), the Tribunal indicated that the principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to learn the case against them, the right to present their evidence, and the right to be heard by an independent decision-maker. I also note that the onus is on the party alleging breach of natural justice to show that such has occurred. In this case, I find that GDMK has failed to discharge that onus. My review of the section 112(5) record as well as the submissions of the parties and the Reasons for the Determination leads me to conclude that GDMK was provided a full opportunity to learn the case against it when it received and responded to the Branch's letter of June 23, 2009.
19. I also note that a breach of natural justice can occur where the Director fails to consider uncontroverted evidence adduced by a party in the investigation or a hearing of a complaint, particularly when that evidence is determinative of a material issue in the complaint. In this case, if there was any merit to GDMK's contention that it previously filed with the Director an up-to-date list of the registration number and license number of the vehicle in question used by GDMK for transporting employees and the Director disregarded that evidence, then I see merit in GDMK's argument based on breach of natural justice. However, in the instant case, the registration documents filed with the Director pertained to different vehicle license plates and not GDMK's vehicle under investigation by the Team, namely the brown Chevrolet Venture having the license plate number 289 FMR. Therefore, I find GDMK's submission in this regard without merit and confirm the Director's Determination in this regard.
20. With respect to the requirement of the posting of the safety notice pursuant to section 6.1 of the *Regulation*, I note that Dhillon, on behalf of GDMK, reiterates the submissions he made on behalf of GDMK before the Determination, namely, that the safety vehicle notice was posted on the backside of the driver's seat. I find that the delegate considered this submission and preferred the evidence of the Team to GDMK's submission. In my view, the delegate, in this case, properly assessed and weighed the evidence and submissions of the parties on this issue and I find no reason to disturb the delegate's determination in this regard.

21. Furthermore, I note that GDMK's entire appeal is a re-argument. This Tribunal has indicated time and again that section 112 does not create a right to have a complaint re-investigated or re-tried. I find GDMK's appeal without any merit and accordingly I dismiss the appeal.

ORDER

22. Pursuant to section 115 of the *Act*, this appeal is dismissed and the Determination, dated July 15, 2009, is confirmed.

Shafik Bhalloo
Member
Employment Standards Tribunal