



An appeal

- by -

Columbia Labour Contracting Ltd.
(“Columbia”)

- 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.: 2014A/114

DATE OF DECISION: November 5, 2014

DECISION

SUBMISSIONS

Daljit Dhanoa

agent for Columbia Labour Contracting Ltd.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “Act”), Columbia Labour Contracting Ltd. (“Columbia”) has filed an appeal of a Determination issued by the Director of Employment Standards (the “Director”) on July 31, 2014. In that Determination, the Director found that Columbia had contravened section 6(1)(f) of the *Employment Standards Regulation* (the “Regulation”). As the Director determined this was Columbia’s second contravention within three years, the Director imposed an administrative penalty in the amount of \$10,000.
2. Columbia appeals the Determination contending that the delegate erred in law and failed to observe the principles of natural justice in making the Determination.
3. These reasons are based on Columbia’s written submission, the section 112(5) “record” that was before the delegate at the time the decision was made and the Reasons for the Determination.

FACTS AND ARGUMENT

4. On August 29, 2012, the Employment Standards Branch (the “Branch”) issued Columbia a farm labour contractor licence (FLC) for up to 63 workers. On June 25, 2014, the Branch’s Agriculture Compliance Team conducted roadside checks in conjunction with the Commercial Vehicle Safety and Enforcement and Workers Compensation Board. The purpose of the inter-agency effort was to inspect vehicles being used to transport farm workers and to ensure that farm labour vehicles are registered with the Branch.
5. Information gathered during the check revealed that Columbia was using a vehicle with license plate number HP6 226 to transport 15 workers to their work site. The driver identified the vehicle as belonging to Columbia.
6. Section 6(1) of the *Regulation* provides that a farm labour contractor must do all of the following:
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 - (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.
7. The Branch’s records indicated that up-to-date licence and registration information for the vehicle with the plate HP6 226 had not been filed with the Branch.
8. On June 30, 2014, the Director’s delegate wrote to Columbia to advise it of the roadside check results, and invited Columbia to respond.

9. Mr. Bhullar responded to the delegate on July 14, 2014, explaining when the Employment Standard Branch team conducted road side checks, the vehicle plate number was found not to have been filed with the Branch. He says that Columbia attempted to fax the registration documents to the Branch's old number, and after that attempt was unsuccessful, Columbia mailed the registration to the Branch's former address, an address on the Employment Standard Branch's business card.
10. Mr. Bhullar asserted that proof of the vehicle's registration had previously been provided to the Branch, but when the vehicle was insured in 2014, the licence plate number was changed.
11. The delegate noted that, as part of the Farm Labour Contractor ("FLC") licensing process, Mr. Bhullar had both passed a written examination and completed an interview to satisfy the Director of his knowledge of the *Act* and the *Regulation*.
12. The delegate also noted that Mr. Bhullar had also attended the Branch office in Langley to obtain his FLC license, and that the Langley office address and fax number were on Columbia's FLC license. The delegate further noted that Mr. Bhullar had visited the Langley Branch office on two occasions in 2011 and 2012 to deal with matters under the *Act*.
13. The delegate concluded that Mr. Bhullar was well aware of the Branch's current address and contact information.
14. The delegate determined that Columbia had contravened section 6(1) of the *Regulation* on June 25, 2014. The delegate determined that Columbia had also contravened section 6(1) of the *Regulation* on September 18, 2012, for which the delegate imposed a penalty of \$2,500. The delegate found that because this was Columbia's second contravention within three years, the penalty was \$10,000.

Argument

15. The sole document filed on appeal is a letter dated September 3, 2014, which reiterates the position that was advanced in the July 14, 2014, letter Mr. Bhullar sent the Employment Standards Branch in response to the preliminary findings letter.

ANALYSIS

16. Section 114 of the *Act* provides that at any time after an appeal is filed and without a hearing of any kind the Tribunal may dismiss all or part of the appeal if the Tribunal determines that any of the following apply:
 - (a) the appeal is not within the jurisdiction of the tribunal;
 - (b) the appeal was not filed within the applicable time limit;
 - (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
 - (d) the appeal was made in bad faith or filed for an improper purpose or motive;
 - (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
 - (f) there is no reasonable prospect the appeal will succeed;
 - (g) the substance of the appeal has been appropriately dealt with in another proceeding;
 - (h) one or more of the requirements of section 112(2) have not been met.

17. Having reviewed the section 112 record and Columbia's submissions, I find no reasonable prospect that the appeal will succeed.
18. 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;
 - (c) evidence has become available that was not available at the time the determination was being made.
19. The Tribunal has consistently said that the burden is on an appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds.
20. Although Columbia's ground of appeal is that the Director failed to observe the principles of natural justice, there is nothing in the submissions nor in the record that supports that ground of appeal. I am also unable to find anything in the appeal submission that supports an error on either of the other two statutory grounds of appeal.
21. Principles of natural justice are, in essence, procedural rights that ensure that parties know the case being made against them, the opportunity to reply, and the right to have their case heard by an impartial decision maker.
22. I am satisfied that the delegate communicated the Branch Team's observations about the vehicle's licence and registration number to Columbia and that Columbia was provided the opportunity to provide a response. As noted above, Mr. Bhullar submitted a letter to the delegate, explaining that he had sent the registration information to an incorrect fax number and an incorrect address. There is nothing to support Columbia's ground of appeal on this basis. Columbia not only had an opportunity to respond, it did so. There is no evidence, or suggestion, that the delegate was partial.
23. Having reviewed the record, I find no error in the delegate's findings that Columbia failed to comply with regulatory requirements to maintain licencing and registration information with the Branch. Although Columbia offered a number of reasons for its failure to comply, I find no error in the delegate's decision to reject those reasons and impose an administrative penalty.
24. Employers have an obligation to structure their affairs in a way that complies with relevant legislation. The record shows that Columbia failed to do so. Once the delegate finds a contravention, there is no discretion as to whether an administrative penalty can be imposed or the amount of that penalty, since those amounts are prescribed by the *Regulation*.
25. I am not persuaded that there is a reasonable prospect the appeal will succeed.

ORDER

26. Pursuant to section 114(1)(f) of the *Act*, I dismiss the appeal on the grounds that there is no reasonable prospect that it will succeed. Accordingly, pursuant to section 115 of the *Act*, the Determination, dated July 31, 2014, is confirmed in the amount of \$10,000 together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal