



An appeal

- by -

Qualified Contractors Ltd.
(the “Employer”)

- 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: Sheldon Seigel

FILE No.: 2008A/89

DATE OF DECISION: October 16, 2008

ANALYSIS

8. I agree with the Director that the Employer's submission is the same as that made prior to the making of the Determination, and that the Director had considered that submission.
9. Section 6.1 of the *Regulation* requires that a safety notice be posted "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."
10. I interpret the language of the provision to require the notice to be posted when the vehicle is in operation and there are employees riding in it. There is no requirement that the notice be permanently affixed to the vehicle or that any vehicle used for the transport of employees have a notice so posted at all times, including when the vehicle is not in use.
11. The Employer has twenty vehicles registered with the Employment Standards Branch. On June 24, an Agricultural Compliance Team conducted a site visit at Khakh Berry farms in Chilliwack B.C. at approximately 9:00 am. The Employer had provided contract labour to Khakh Berry farms and had five vehicles on site that were used to transport farm workers to the site earlier in the day. An inspection of those vehicles resulted in the inspection team determining that four of the five had notices posted and one vehicle did not have the required notice.
12. The Director sent a letter asking the Employer to respond to the allegation that the vehicle was not in compliance with the *Regulation*. Mr. Shoker, a representative of the Employer, responded by stating that the Employer had a policy that each vehicle used to transport workers is checked for safety notices before being dispatched and specifically that the vehicle that did not have the notice displayed at the time of the inspection was checked in the morning by the driver. The representative of the Employer postulated; "someone must have ripped [the notice] off [of the vehicle]."
13. In making the Determination, the Director found that the Employer was aware of the requirements of the *Regulation*, particularly the requirement to post the notice. The Director said:

Qualified failed post [sic] a vehicle safety notice, within the vehicle, provided by the Director respecting vehicle and passenger safety requirements and thus has contravened Section 6.1 of the Regulation.

Shoker's statement that somebody might have "ripped off the notice" is insufficient. It is the employers' responsibility to ensure that each and every vehicle has a vehicle safety notice posted within it when used to transport employees.
14. I find that the Director erred in his Determination. A careful reading of the Determination reveals no evidence whatsoever that the Employer failed to comply with Section 6.1 of the *Regulation*. The section requires that the safety notice be posted while the vehicle is being used to transport workers. The inspection team observed the vehicle without the posting while the vehicle was parked, unoccupied, and not being used for any purpose. The question that the Director was obligated to consider was whether the vehicle was used to transport workers without the notice posted as required. Mr. Shoker stated that the notice was present in the morning and might have been removed since. He also described a policy or system of driver checks designed to ensure compliance with the *Regulation* and specifically that the notice was posted as required. This was the only evidence available to the Director as to whether the notice was indeed posted when that vehicle was used to transport workers. Without clearly pronounced

reasons why that sole piece of evidence should not be relied upon, the Director cannot simply find the contrary by calling Mr. Shoker's statement "insufficient." The Director also failed to consider the presence of the notice in four of the other vehicles as evidence in support of Mr. Shoker's submission regarding the Employer's policy and system.

15. I find that the Director made the Determination that the Employer contravened section 6.1 of the *Regulation* with insufficient evidence of non-compliance and without proper consideration of the evidence of the Employer. The Director also failed to provide sufficient reasons for his decision.
16. I find that the foregoing acts of the Director represent a breach of the principles of natural justice. The appeal succeeds.

ORDER

17. Pursuant to section 115 of the *Act*, I cancel the Determination dated July 4, 2008.

Sheldon Seigel
Member
Employment Standards Tribunal