

An appeal

- by -

Preet Farm Contractors Ltd.  
("PFC")

– 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)

and

An application for suspension

- by -

Preet Farm Contractors Ltd.  
("PFC")

– of a Determination issued by –

The Director of Employment Standards  
(the "Director")

Pursuant to section 113 of the  
*Employment Standards Act* R.S.B.C. 1996, C. 113 (as amended)

**TRIBUNAL MEMBER:** Carol L. Roberts

**FILE No.:** 2010A/108 & 2010A/109

**DATE OF DECISION:** September 28, 2010

## DECISION

### SUBMISSIONS

Ravi Sandhu

on behalf of the Director of Employment Standards

### OVERVIEW

1. This is an appeal by Preet Farm Contractors Ltd. (“PFC”), pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination of the Director of Employment Standards (the “Director”) issued July 14, 2010.
2. Following a roadside check by the Employment Standards Branch Agriculture Compliance Team, the Commercial Vehicle Safety and Enforcement, and WorkSafe BC, to determine compliance with relevant legislation, the Director’s delegate determined that PFC had contravened section 7 of the *Employment Standards Regulation* (the “*Regulation*”) in transporting more farm workers than the vehicle had seatbelts. The Director suspended PFC’s licence from July 23, 2010, to August 22, 2010, and imposed a \$500.00 administrative penalty for the contravention.
3. PFC 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. PFC also sought a suspension of the Determination.
4. Section 36 of the *Administrative Tribunals Act* (“*ATA*”), which is incorporated into the *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). This appeal is decided on the section 112(5) “record”, the written submissions of the parties and the Reasons for the Determination.

### FACTS

5. On May 12, 2007, the Employment Standards Agriculture Compliance Team, in a joint effort with the Commercial Vehicle Safety and Enforcement and WorkSafe BC, conducted a roadside check to ensure that farm labour vehicles used to transport farm workers were in compliance with all relevant legislation. One of the vehicles inspected was a white van used by PFC to transport farm workers to a nearby greenhouse. The inspection revealed that there were 16 farm workers in a 15 passenger van that had only 15 seatbelts. The driver confirmed that there were 16 people in the van.
6. WorkSafe BC issued PFC an order to comply with Occupational Health and Safety Regulations.
7. On May 27, 2010, the Branch sought PFC’s response to the Compliance Team’s observations. Although PFC acknowledged having 16 workers in the 15 passenger van, it attributed the overloading to a driver error.
8. The delegate considered the *Act* and the *Regulation* and concluded that PFC’s explanation as to how the additional passengers entered the van was irrelevant, given that it admitted the facts. The delegate suspended PFC’s farm labour licence for one month.

## ISSUES

9. Did the delegate fail to comply with the principles of natural justice in making the determination?

## ARGUMENT AND ANALYSIS

10. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
- the director erred in law;
  - the director failed to observe the principles of natural justice in making the determination; or
  - evidence has become available that was not available at the time the determination was being made.
11. The Appellant has the burden of establishing the grounds of the appeal. PFC must provide persuasive and compelling evidence that the delegate failed to observe the principles of natural justice.
12. Principles of natural justice are, in essence, procedural rights that ensure that parties know the case being made against them and the opportunity to reply, and the right to have their case heard by an impartial decision maker.
13. The delegate notified PFC of the Compliance Team's observations and invited PFC to respond. PFC acknowledged transporting more passengers than the van was licensed to transport. There is no basis for this ground of appeal.
14. The essence of PFC's appeal is that the decision is unfair. Although this is not a ground of appeal, I will address this aspect of PFC's submission, as it appears to suggest that the Director improperly exercised his discretion in imposing the suspension, which would amount to an error of law.
15. PFC contends that the drivers are aware of the maximum number of passengers allowed in each vehicle and that it is not possible for PFC to control the actions of each driver. Accordingly, PFC submits that the one month suspension is both unreasonable and onerous. It says that WorkSafe BC has already fined the driver and imposed administrative penalties on the company. It says that PFC has been penalised enough. Further, PFC argues, the Director did not reasonably consider the financial consequences the suspension will have upon both the employees and the company.
16. The delegate submits that the purpose of the roadside checks are to prevent accidents, such as the one in 2007 in which three workers were killed as a result of being in an overloaded vehicle without sufficient seatbelts. The delegate says that the suspension is a disincentive that is needed to promote compliance with the *Act* and to prevent a repeat contravention.
17. Section 7 of the *Regulation* provides that the Director of Employment Standards may cancel or suspend a farm labour contractors licence if:
- f) the Workers' Compensation Board has, under the *Workers Compensation Act*, taken an enforcement action described in one or both of paragraphs (i) and (ii) against the farm labour contractor with respect to transportation, by the farm labour contractor, of employees of the farm labour contractor, another farm labour contractor or a producer:
    - (i) issued an order under section 187 of the *Workers Compensation Act* to comply with section 115 of that Act or section 4.1 or 4.3 or Part 17 of the Occupational Health and Safety Regulation;

(ii) imposed an administrative penalty in the circumstances described by section 196(1) of the *Workers Compensation Act* with respect to a contravention of section 115 of that Act or section 4.1 or 4.3 or Part 17 of the Occupational Health and Safety Regulation.

18. There is no dispute that the Workers' Compensation Board (WorkSafe BC) issued an order against PFC to comply with Part 17 of the Occupational Health and Safety Regulation. If that occurs, the Director has the discretionary power to cancel or suspend a farm labour contractor's licence.
19. In *Gondreau* (BC EST # D066/98), the Tribunal commented on the Director's discretionary powers under section 73 of the *Act* as follows:

The Branch is an administrative body charged with enforcing minimum standards of employment in the workplaces of employees covered by the Act. It is deemed to have a specialized knowledge of what is appropriate in the context of carrying out that mandate. The Director is authorized by the statute to exercise a discretion under Section 73, applying the special knowledge of the branch, to allow or deny variances from the minimum standards. The Tribunal will not interfere with that exercise of discretion unless it can be shown the exercise was an abuse of power, the Director made a mistake in construing the limits of her authority, there was a procedural irregularity or the decision was unreasonable. Unreasonable, in this context, has been described as being:

... a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". *Associated Provincial Picture Houses v. Wednesbury Corp.* [1948] 1 K.B. 223 at 229

Absent any of these considerations, the Director even has the right to be wrong.

20. These principles apply equally to the Director's exercise of discretion under s. 7 of the *Regulation*.
21. The delegate considered PFC's submissions and, after concluding that a disincentive was required to promote compliance, exercised his discretion to suspend PFC's licence for one month. I am not persuaded that the decision was an abuse of power. There is also no evidence that the Director made a mistake construing the limits of his authority or that there was a procedural irregularity. The delegate also considered PFC's arguments as well as the purpose of the legislation in suspending PFC's licence. I am also not persuaded that this decision was unreasonable, as set out above.
22. The appeal is dismissed.
23. In light of my decision to dismiss the appeal, I do not find it necessary to address PFC's application to suspend the Determination.

**ORDER**

24. I Order, pursuant to Section 115 of the *Act*, that the Determination, dated July 14, 2010, be confirmed.

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**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**