

An appeal

- by -

B.R. Enterprises Ltd.
("B.R.")

- 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.: 2008A/94

DATE OF DECISION: October 24, 2008

FACTS AND ARGUMENT

9. The driver of the vehicle that had transported BR's employees was not present at the site visit of August 6, 2008. Accordingly, each of the employees was asked if a daily log had been left with them. No one was able to produce a daily log for inspection.
10. At the August 15, 2008 site visit, a vehicle labelled "BR Enterprises Ltd." that had been used to transport employees to the worksite was on site. The vehicle had not been registered with the Branch.
11. On August 8, 2008, a delegate of the Director sent BR a letter providing it with an opportunity to respond to the observations made at the August 6 site visit. On August 14, 2008, Rajwant and Amritpal Brar of BR went to the Branch office and spoke with the delegate. They told him that the daily log was on the site during the visit but that the worker had forgotten to show it to the delegate when asked. On August 18, 2008, BR sent a written response to the Branch repeating that the employee had the log with him but because he did not understand English, the employee did not produce the log for inspection.
12. In a telephone conversation between the delegate and Rajwant Brar, the delegate advised him that the ACT had noticed an unregistered vehicle at the August 15, 2008 site visit. Mr. Brar said that the licence plate had changed after the vehicle failed a commercial licence inspection but the vehicle remained the same. The delegate advised him that a farm licence contractor was required to send an updated vehicle registration list and licence plate numbers of all vehicles used to transport employees. On August 18, 2008, BR sent the vehicle registration of the vehicle at the site on August 15, 2008.
13. After considering BR's responses, the delegate found that BR was aware of the requirements of the *Act* and the *Regulation* as it had completed the FLC licensing process. BR's directors were required to pass a written examination to satisfy the director of their knowledge of the *Act* and *Regulation* and to complete an interview process designed to ensure their understanding of the licensing requirements. This included the requirement to keep at the worksite and make available for inspection a daily log, and to provide an up-to-date list of vehicle registrations to the Branch.
14. The delegate noted that during the ACT's visit, interviews were conducted in Punjabi. Further, he noted that the employee identified by BR as having the log book clearly stated that he did not have the daily log when asked.
15. The delegate also noted that BR did not deny that it had not provided the Branch with an up to date list of vehicle registrations. BR faxed in the registration of the vehicle matching the licence plate found at the August 15, 2008 visit on August 18, 2008. The delegate found that BR had contravened section 6 of the *Regulation*.
16. BR says that the delegate erred in law. In its appeal letter, Mr. Brar repeats his assertion that his employee did not understand that he was being asked for the daily log book. He contends that the log book was at the site and that the ACT ought to have known not to ask for the book in English as all the workers spoke Punjabi. Mr. Brar said that his employee told him that some people came to the site asking for a book. Only later did he come to understand that these people were the ACT. He says that the employee did not understand the delegate was looking for a piece of paper rather than an actual book until Rajwant told him what the log book was. Mr. Brar says that even though he told the delegate the book had been on the site and Rajwant telephoned the delegate on three occasions to advise him of the name of

the employee who had the log book, the delegate told him there was nothing he could do. Mr. Brar contends that he should not pay the penalty when he did not contravene the *Regulation*.

17. BR made no submissions on the second contravention, that of the non-licensed vehicle notification.
18. The delegate submits that all of BR's arguments were presented and considered by the delegate when making his determination. The delegate submitted the records of the interviews and vehicle information demonstrating the contraventions. The delegate asked that the appeal be denied.

ANALYSIS

19. 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
20. The burden of establishing the grounds for an appeal rests with an Appellant.
21. BR's appeal document does not describe how the delegate erred in his application or interpretation of the *Regulation*. In *JC Creations* (BC EST #RD317/03), the Tribunal concluded that, given the purposes and provisions of the legislation, it is inappropriate to take an "overly legalistic and technical approach" of the appeal document: "The substance of the appeal should be addressed both by the Tribunal itself and the other parties, including the Director. It is important that the substance, not the form, of the appeal be treated fairly by all concerned."
22. As a result, I have not limited the grounds of appeal to that identified by the appellant. Nevertheless, the appeal document must disclose an appealable issue. A disagreement with the result, in and of itself, is not a ground of appeal. An appeal is not an opportunity to re-argue a case that has been advanced before the delegate.
23. I am not persuaded that the appeal has merit. There is nothing in the appeal submission that is substantively different than what was provided to the delegate.
24. BR has not established a reviewable error of law (*Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)* (1998] B.C.J. (C.A.)). Although it asserts that its employee did not understand English and therefore failed to provide the delegate with the daily log book, BR did not address the delegate's statement that the ACT conducted interviews in Punjabi. Further, Mr. Brar's assertions to the delegate were inconsistent. He first told the delegate that the employee "forgot" to give it to the employee. In a subsequent letter, he advised the delegate that the employee did not understand English. In his appeal, Mr. Brar said that although his employee denied that there was a book on site, the employee did not understand the daily log book was, in fact, merely a sheet with the workers' names on it. On this basis, I conclude that, contrary to BR's assertions, the employee was spoken to in Punjabi and did understand the request. If the employer is not on site, it has the responsibility of educating its workers

what a daily log is and that it must be produced to employees of the Branch when requested. It was not produced, as required by section 6(4) of the *Regulation* and I find no error of law in the delegate's conclusions.

25. BR has acknowledged the section 6(1) of the *Regulation* contravention and has made no submissions on that aspect of the Determination.
26. I dismiss the appeal.

ORDER

27. I Order, pursuant to Section 115 of the *Act*, that the Determination, dated August 22, 2008, be confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal