

An appeal

- by -

Grewal Berry Farms Inc.  
("Grewal")

- 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.:** 2007A/117

**DATE OF DECISION:** November 20, 2007

## DECISION

### SUBMISSIONS

Rajan Dhami, Barrister & Solicitor

on behalf of Grewal

Ravi Sandhu

on behalf of the Director of Employment Standards

### OVERVIEW

1. This is an appeal by Grewal Berry Farm Inc. ("Grewal"), pursuant to Section 112 of the *Employment Standards Act* ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued August 21, 2007.
2. After conducting a worksite visit, the Director's delegate determined that Grewal had contravened section 13(1) of the *Employment Standards Act* (the "Act") in acting as a farm labour contractor without being licensed under the Act. As this was Grewal's second contravention of section 13(1), the Director imposed a \$2,500.00 administrative penalty.
3. Grewal says that the Director's delegate erred in law and failed to observe the principles of natural justice in making the Determination and seeks to have the Determination cancelled.
4. Section 36 of the *Administrative Tribunals Act* ("ATA"), which is incorporated into the *Employment Standards 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). Although Grewal sought an oral hearing, the issues to be decided are legal issues on which oral evidence is not required. I conclude that this appeal can be adjudicated on the section 112(5) "record", the written submissions of the parties and the Reasons for the Determination.

### FACTS

5. The facts as set out by the delegate and not in dispute are as follows.
6. On July 17, 2007, the Employment Standards Agriculture Compliance Team conducted a worksite visit at Fraser Berry Farms Ltd. ("Fraser"), a blueberry farm in Abbotsford. The purpose of the visit was to ensure that Farm Labour contractors were in compliance with the *Act* and *Regulations*. Grewal employees were involved in the harvesting of blueberries at the time of the visit. Grewal is not a licensed Farm Labour Contractor.
7. The Industrial Relations Officer, Ravi Sandhu, spoke to the person overseeing the farm who identified herself as Joan Smith, Fraser's owner. She advised him that all of the workers were Grewal employees. She said that Grewal's owner, Surjit Grewal, dropped off all the employees each day and that he was responsible for paying them. She was unaware Grewal was not a licensed Farm Labour Contractor. Mr. Sandhu spoke to a number of workers. Some of them were aware that Grewal was their employer while others were not.

8. On July 18, 2007, the delegate advised Grewal of the results of the inspection, advising Mr. Grewal that it was his view Grewal had contravened section 13(1) of the Act. The delegate offered Mr. Grewal an opportunity to respond to his findings. Mr. Grewal replied that he was not acting as a Farm Labour Contractor because he had a crop purchase agreement with Fraser and that he was supplying labour to his leased land. A letter from Jason Smith, who identified himself as Fraser's owner, accompanied the response. The letter indicated that Fraser leased the farm from Mr. Smith and then entered into the crop purchase agreement with Grewal. The letter indicated that Joan Smith was unaware of this agreement.
9. The delegate considered the definitions of the *Act* and the *Regulations* as well as section 13(1) of the *Act* and concluded that, as Fraser owned the farm where the work was being performed, it was a producer as defined in the *Act*. He concluded that the harvesting was for the benefit of both Fraser and Grewal. The delegate decided that to allow a person to contract out of the *Act* by purchasing the product to be harvested prior to the actual work being done would defeat one of the purposes of the *Act*, which was to protect vulnerable agricultural workers. He reviewed the licensing provisions and their relation to worker protections. He examined the agreement between Fraser and Grewal and determined that, according to that agreement, Grewal was acting as a Farm Labour Contractor and Fraser was acting as a producer. He concluded that Grewal was in contravention of section 13(1).

## ISSUES

1. Whether the delegate erred in finding that Grewal was a Farm Labour Contractor; and
2. Whether the Director was biased in delegating the job of investigator and decision maker to the same person.

## ARGUMENT AND ANALYSIS

10. 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
11. The Appellant has the burden of establishing the grounds of the appeal. Grewal must provide persuasive and compelling evidence that there were errors of law in the Determination, as alleged, or that the delegate failed to observe the principles of natural justice.

***Error of Law***

12. The Tribunal has adopted the factors set out in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)* (1998] B.C.J. (C.A.) as reviewable errors of law:
1. A misinterpretation or misapplication of a section of the Act;
  2. A misapplication of an applicable principle of general law;
  3. Acting without any evidence;
  4. Acting on a view of the facts which could not be reasonably entertained; and
  5. Exercising discretion in a fashion that is wrong in principle
13. Questions of fact alone are not reviewable by the Tribunal under section 112. In *Britco Structures Ltd.*, BC EST #D260/03, the Tribunal held that findings of fact were reviewable as errors of law if they were based on no evidence, or on a view of the facts which could not reasonably be entertained.
14. Grewal's counsel submits that the delegate erred in law in finding that Grewal was a farm labour contractor. He contended that there was no evidence to suggest Grewal's employees were under the control of anyone other than Grewal. He also submits that the delegate erred in finding that Fraser was a producer.
15. In my view, it is unnecessary to consider whether or not Fraser was a producer, or the provisions of the lease agreement. There is no dispute that Grewal's employees were harvesting blueberries, an agricultural product, on Fraser property.
16. Section 1 of the *Act* defines a farm labour contractor to mean *an employer whose employees work, for or under the control or direction of another person, in connection with the planting, cultivating or harvesting of an agricultural product.*
17. Although Grewal's counsel submits that there was no evidence to suggest that Grewal's employees were under the control of anyone other than Grewal, Mr. Grewal was not present at the farm at the time of the visit. There was no dispute to the delegate's finding that Ms. Smith was overseeing the farm at the time of his visit. Therefore, it is reasonable to infer that the workers were under the day to day direction of Ms. Smith. I find no error in the delegate's conclusion that Grewal was an unlicensed farm labour contractor. (see also *OK Labour Co. Ltd.* (BC EST #D338/00), *Marshall* (BC EST #D254/99, and *JKJ Contracting Ltd.* (BC EST #D201/04)

***Failure to Observe the Principles of Natural Justice***

18. Grewal argues that the fact that the investigator in this matter was appointed Delegate of the Director offends the principles of natural justice. The submission of Grewal's counsel is as follows:

Simply put, the investigator presents the case/evidence and shouldn't be put in the position of making the ultimate determination and imposing a penalty on the Appellant. The inherent bias in such a situation is obvious.

19. No authority is cited for this proposition.
20. The Branch has the duty to receive and investigate or adjudicate complaints. The purposes of the Act as set out in section 2 include a) ensuring that employees in British Columbia receive at least basic standards of compensation and conditions of employment, b) the promotion of fair treatment of employees and d) to provide fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*.
21. As the Tribunal noted in *Ludhiana Contractors Ltd.* (BC EST #D361/98), in instances of the issuing or cancellation of farm labour contractor licenses, the Director is the *principal* respondent party rather than a neutral adjudicator who determines disputes under the *Act* between an employer and an employee. When issuing or canceling farm labour contractor licenses, the Director is exercising a power more akin to an administrative rather than an adjudicative function.
22. In my view, the Director's delegate is performing similar functions when the Branch is conducting site visits to ensure compliance with the *Act*. There is no dispute between an employer and an employee. The delegate is performing a license inspection. In this instance, I am not persuaded that there is "inherent bias" where the same delegate conducts site visits and issues determinations.
23. The appeal is dismissed.

## **ORDER**

24. I Order, pursuant to Section 115 of the Act, that the Determination, dated August 21, 2007, be confirmed.

---

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