

An appeal

- by -

Gursewak Malhi carrying on business as G&J Malhi Farms  
("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 M. Seigel

**FILE No.:** 2007A/103

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

## DECISION

### SUBMISSIONS

Gursewak Malhi	on behalf of the Employer
Jaspal Singh Uppal	on behalf of the Director

### OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act (Act)* brought by the Employer, of a Determination that was issued on August 7, 2007 by the Director. The Determination found that the Employer had contravened section 9 of the *Act*, in respect of the employment of a child under 12 years of age.
2. The Director imposed an administrative penalty on the Employer under Section 29(1) of the *Employment Standard Regulation* in the amount of \$500.00.
3. The Employer provides claims that the Director failed to observe the principles of natural justice in making the determination.
4. An oral hearing was not requested.

### ISSUE

5. Did the Director fail to observe the principles of natural justice in making the Determination?

### ARGUMENT

6. The Employer submits that the child and his mother were residents of the G & J Malhi Farm where the contravention of the act is alleged to have occurred. The Employer states that the child and his mother were not employees at the farm. The child's mother came to help out on July 11, 2007, and the child was playing among the blueberries. When the inspection team arrived, the child was picking blueberries and eating them for fun. He was not working for the farm at the time.
7. The Employer also submits that Mr. Malhi was the child's supervisor but was not home at the time of the inspection. The compliance team did not ask where the farm owner or child's supervisor was.
8. The Director submits that all of the information contained in the Employee's submissions was available and considered at the time of the investigation leading up to the Determination and that the Determination was based on a full analysis of the evidence available at that time.

## ANALYSIS

9. I find that the appeal discloses no evidence of a failure of the Director to follow the principles of natural justice in making the determination.
10. The Employer's evidence is simply a restatement of the position he took during the investigation. The Director considered that position and addressed it in the Determination. The Employer submitted no new information that would assist in the Determination, or any new evidence that was not available at the time of the investigation or Determination.
11. Section 9 of the *Act* makes it an offence to employ child under 12 years of age without obtaining the Director's permission. The Employer does not dispute that the child was under the age of 12 or that the Director's permission was not obtained. The only issue in the original Determination was whether the child was employed.
12. The inspection team found the child hand harvesting blueberries in a row of blueberry bushes where no other person was working. The Director found that the child was doing a job usually performed by an employee.
13. The Director obtained submissions of the Employer. He considered those submissions and the notes of the inspection team and concluded on the facts that the child was employed.
14. The Employer has not provided any submission that persuades me that the Director's decision should be reconsidered. The Employer is not entitled to a second consideration of the same facts without persuading this Tribunal that the Director has erred in a significant way.
15. I find the Director did not so err.

## ORDER

16. Pursuant to section 115 of the *Act*, I confirm the Determination.

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**Sheldon M. Seigel**  
**Member**  
**Employment Standards Tribunal**