

An appeal

- by -

A & M Toor Farms Ltd.
("A & M Toor")

- 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: David B. Stevenson

FILE No.: 2009A/127

DATE OF DECISION: November 3, 2009

DECISION

SUBMISSIONS

Mukhtiar Toor	on behalf of A & M Toor Farms Ltd.
Reena Grewal	on behalf of the Director

OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by A & M Toor Farms Ltd. (“A & M Toor”) of a Determination that was issued on August 5, 2009 by a delegate of the Director of Employment Standards (the “Director”). The Determination found that A & M Toor had contravened Part 2, Section 13 of the *Act* and imposed an administrative penalty on A & M Toor under Section 29(1) of the *Employment Standards Regulation* (the “*Regulation*”) in the amount of \$500.00.
2. A & M Toor has filed an appeal of the Determination, alleging the Director failed to observe principles of natural justice in making the Determination.

THE FACTS

3. The Determination provides the following facts:
 1. On June 30, 2009, the Employment Standards Branch Agricultural Compliance Team (the “Team”) conducted a worksite visit of A & M Toor for the purpose of ensuring compliance with the *Act* and *Regulation* with respect to farm labour contractors, producers and farm workers.
 2. While at the A & M Toor farm, the Team found B & M Boparai Farm Services Ltd. (“B & M”) providing contract labour to A & M Toor.
 3. The Team interviewed Mukhtiar Boparai, the owner of B & M, who confirmed B & M had a contract to harvest raspberries for A & M Toor, that B & M had brought six workers to the A & M Toor farm and that the workers were harvesting raspberries for A & M Toor.
 4. At the time B & M was not licensed under the *Act* to operate as a farm labour contractor.
 5. On July 3, 2009, A & M Toor was sent a letter by the Director advising of the findings and asking for a response, which the Director received on July 13, 2009.
 6. A & M Toor said B & M had been engaged in good faith and that a representative of B & M had given assurances they had written the farm labour contracting test and paid the required fees for the licence.
4. The appeal adds nothing to the above facts nor does it challenge those findings of fact in any way.

ISSUE

5. The issue is whether the Director erred in finding A & M Toor had contravened section 13 of the *Act* by engaging the services of an unlicensed farm labour contractor.

ARGUMENT

6. A & M Toor makes the same argument in this appeal as he did in responding to the Director: that it was not his fault; that he innocently relied on the assurances given by a representative of B & M and hired them in good faith.
7. The Director says the arguments made to the Director during the investigation by A & M Toor, which are repeated in the appeal, were considered but, in light of the language of section 13, not accepted.

ANALYSIS

8. As a result of amendments to the *Act* which came into effect on November 29, 2002, the grounds of appeal are statutorily limited to those found in Subsection 112(1) of the *Act*, which says:
 112. (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:
 - (a) the director erred in law;
 - (b) the director failed to observe the principles of natural justice in making the determination;
 - (c) evidence has become available that was not available at the time the determination was made.
9. The Tribunal has consistently indicated that the burden in an appeal is on the appellant to persuade the Tribunal there is an error in the Determination under one of the statutory grounds. A party alleging a denial of natural justice must provide some evidence in support of that allegation: see *Dusty Investments Inc. dba Honda North*, BC EST #D043/99.
10. The *Act* does not provide for an appeal based on errors of fact and the Tribunal has no authority to consider appeals based on alleged errors in findings of fact unless such findings raise an error of law: see *Britco Structures Ltd.*, BC EST #D260/03.
11. The appeal does not identify how the Director failed to observe principles of natural justice in making the Determination. As close as I can surmise, A & M Toor says this ground stems from the decision of the Director to reject the reasons offered for engaging an unlicensed farm labour contractor and not accepting the “good faith hiring” argument. The Determination and the material on file do not suggest the Director failed to observe principles of natural justice. The Director did what was required – provide A & M Toor with a fair and reasonable opportunity to know the case against them and the opportunity to respond: see *BWI Business World Incorporated*, BC EST #D050/96 and *Imperial Limousine Service Ltd.*, BC EST #D014/05.
12. I also agree that the reasons given by A & M Toor for using an unlicensed farm contractor are insufficient to avoid a finding of a breach of section 13. The wording of the relevant part of section 13, subsection (3), is expressed in mandatory terms:
 - (3) A person **must not** engage the services of a farm labour contractor unless the farm labour contractor is licensed under this Act. (emphasis added)
13. In my view, this language requires a finding of a contravention of the *Act* once the facts establishing the prohibited conducted are present, which they were in this case. Such a provision may allow for an offender

to be let off by showing due diligence in attempting to comply, but I am not satisfied that A & M Toor has shown the required degree of due diligence was exercised in this case. The proper course of action, as suggest in the Determination, would have been for A & M Toor to have checked with the Branch to ensure B & M were licensed and that A & M Toor was legally able to use them before engaging their services.

14. I cannot find any error in the analysis of the delegate in the Determination. There is no substantial basis upon which it can be said the Director failed to observe the principles of natural justice in making the Determination. Accordingly, I find that the appeal should be dismissed and the Determination confirmed.

ORDER

15. Pursuant to section 115 of the *Act*, I confirm the Determination dated August 5, 2009.

David B. Stevenson
Member
Employment Standards Tribunal