

An appeal

- by -

K.P. Labour Contractor Ltd.
(“K.P.”)

- 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.: 2015A/124

DATE OF DECISION: October 27, 2015

DECISION

SUBMISSIONS

Mohinder Multani

on behalf of K.P. Labour Contractor Ltd.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), K.P. Labour Contractor Ltd. (“K.P.”) has filed an appeal of a Determination issued by the Director of Employment Standards (the “Director”) on August 12, 2015.
2. After conducting a roadside check of farm labour vehicles in conjunction with Commercial Vehicle Safety and Enforcement and Worksafe BC on June 11, 2015, the Director’s delegate determined that K.P. had failed to file with the Director an up-to-date registration number and inspection certificate for a vehicle used by K.P. for transporting employees. The delegate found that K.P. had contravened section 6(1)(f) of the *Employment Standards Regulation* (the “*Regulation*”) in failing to meet a condition of its farm labour contractor license. As this was K.P.’s first contravention, the Director imposed a \$500 administrative penalty.
3. K.P. appeals the Determination contending that the delegate failed to observe principles of natural justice in making the Determination and erred in law.
4. This decision is based on the submissions of the parties, the section 112(5) “record” that was before the delegate at the time the decision was made, and the Reasons for the Determination.

FACTS AND ARGUMENT

5. On April 27, 2015, K.P. was issued a farm labour contractor (“FLC”) licence under the *Act* permitting them to employ a maximum of 52 employees. The license expires April 26, 2018. As part of the FLC licensing process, applicants are required to pass a written examination to satisfy the Director of their knowledge of the *Act* and *Regulation*. As part of the licensing process, applicants are taken through an application checklist to ensure their understanding of their obligations under the statutory regime, including section 6(1)(f) of the *Regulation*. Mohinder Multani (“Ms. Multani”) successfully completed the examination and fulfilled the licensing requirements.
6. During the roadside check, Kewal Multani, the driver of a vehicle with plate number JM 3824, identified the vehicle as one of K.P.’s vehicles. That vehicle was being used to transport 17 workers to Village Farms greenhouses in Delta. As of June 11, 2015, K.P. had not filed a registration number or inspection certificate for that vehicle.
7. On June 16, 2015, the delegate informed K.P. in writing of the June 11, 2015, observations, inviting it to respond. On June 24, 2015, Ms. Multani informed the delegate that she had faxed a registration number for the vehicle to the Employment Standards Branch (the “Branch”), but not the inspection certificate. When the delegate asked Ms. Multani when she had faxed the documents, Ms. Multani stated that she did not remember, but stated that the insurance documents were faxed immediately after purchasing the insurance. She said that she would fax the information again the same day. The delegate had no further contact from K.P.

8. Noting that the Branch had not received a vehicle registration number or inspection certificate for the vehicle K.P. used to transport farm workers by June 11, 2015, the delegate found K.P. in contravention of section 6(1)(f) the *Regulation*. The delegate noted that, even though K.P. stated it would provide a registration number and inspection certificate, it had not received that as of the date of the Determination.
9. In accordance with section 29(1) of the *Regulation*, the delegate imposed a penalty of \$500 for the contravention.
10. In its appeal submissions, K.P. says that the vehicle driven by Kewal Multani on June 11, 2015, was registered to 0914942 B.C. Ltd., and that 0914942 B.C. also provides services to K.P. K.P. further says that on the day of the road-side inspection, the driver displayed “the papers” to the inspection officer and also faxed the documents to the Branch. Attached to the appeal submission was a Commercial Vehicle Inspection report for a vehicle owned or leased by Western Canada Remarketing Inc. and insurance documents for Licence Plate JM 3824 owned by 0914942 B.C. Ltd. K.P. seeks to have the administrative penalty “waived”.

ANALYSIS

11. 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;
 - (c) evidence has become available that was not available at the time the determination was being made.
12. The burden is on an appellant to demonstrate a basis for the Tribunal to interfere with the decision. I conclude that K.P. has not met that burden and dismiss the appeal.

Failure to observe the principles of natural justice
13. Natural justice is a procedural right which includes the right to know the case being made, the right to respond and the right to be heard by an unbiased decision maker. The delegate informed K.P. of the June 11, 2015, observations and offered it the opportunity to respond to the delegate’s observations that it was in contravention of the *Regulation*. In fact, Ms. Multani did respond. I find no basis for an appeal on this ground.

New Evidence
14. In *Re Merilus Technologies* (BC EST # D171/03) the Tribunal established the following four-part test for admitting new evidence on appeal:
 - (a) the evidence could not, with the exercise of due diligence, have been discovered and presented to the Director during the investigation or adjudication of the complaint and prior to the Determination being made;
 - (b) the evidence must be relevant to a material issue arising from the complaint;
 - (c) the evidence must be credible in the sense that it is reasonably capable of belief; and
 - (d) the evidence must have high probative value, in the sense that, if believed, it could, on its own or when considered with other evidence, have led the Director to a different conclusion on the material issue.

15. K.P. seeks, for the first time on appeal, to submit new evidence and provide a different explanation for its failure to provide the necessary documentation.
16. Section 112 of the *Act* is not meant to be a reexamination of a complaint but rather a review of the evidence and the underlying Determination. The Tribunal does not allow the appeal procedure to be used to make a case that should have been provided to the Delegate during the investigative process. See *Tri-West Tractor Ltd.*, BC EST # D268/96, and *Re: Kaiser Stables Ltd.*, BC EST # D058/97. Not only is the “new evidence” different from the information initially provided during the investigation process, the information was clearly available at the time the delegate was investigating the contravention. Furthermore, I am not persuaded that the evidence could have led the Director to a different conclusion on the material issue, which is whether or not K.P. contravened the *Regulation*.
17. I also find no error of law in the delegate’s Determination.
18. Section 6(1(f) of the *Regulation* requires a farm labour contractor to file with the Director an up-to-date list of the registration and licence numbers of each vehicle used by the farm labour contractor for transporting employees, and if the vehicle is owned by the farm labour contractor, copies of the inspection certificate and other records that must be maintained under section 25 of the *Motor Vehicle Act Regulations*. K.P. had not done so by June 11, 2015.
19. K.P. seeks to have the penalty assessment “waived”. In *Acton Super-Save Gas Stations Ltd.* (BC EST # D067/04) the Tribunal concluded that the *Act* provides for mandatory administrative penalties without any exceptions: “[T]he legislation does not recognize [fairness] considerations as providing exceptions to the mandatory administrative penalty scheme.”
20. Once the delegate finds a contravention, there is no discretion as to whether an administrative penalty can be imposed. Furthermore, the amount of the penalty is fixed by the *Regulation*.
21. The appeal is dismissed.

ORDER

22. Pursuant to section 115(1) of the *Act*, I Order that the Determination, dated August 12, 2015, be confirmed in the amount of \$500 together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal