

An appeal

- by -

Dhesi Farms Ltd.
("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/122

DATE OF DECISION: December 11, 2007

DECISION

SUBMISSIONS

Malkit S. Dhese on behalf of the Employer
Kerry Kainth on behalf of the Director

OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by the Employer, of a Determination that was issued on August 28, 2007 by the Director. The Determination found that the Employer had contravened section 13(1) of the *Act*, by acting as a farm labour contractor without being licensed as such under the *Act*.
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 erred in law, failed to observe the principles of natural justice in making the determination, and that evidence has become available that was not available at the time the Determination was being made.
4. An oral hearing was not requested.

ISSUE

5. Did the Director err in law or fail to observe the principles of natural justice in making the Determination?
6. Was new evidence presented that was not available at the time of the Determination, and what effect, if any, does that new evidence have on the Determination?

ARGUMENT

7. The Employer submits that the Director made an error in determining that Dhese Farms acted as a farm labour contractor.
8. Mr. Dhese submits that Dhese Farms did not contract any farm labour to Mann farms on July 5, 2007, and did not transport or have any knowledge of the workers working on Mann Farms on that date. Further, Mr. Dhese submits that a representative of Mann Farms contacted one employee of the Employer and brought that employee to Mann Farms to pick strawberries.

THE FACTS AND ANALYSIS

9. The Employer selected each of the three grounds available on the appeal form for appealing the Determination. The Employer provided a short letter of submissions, and a letter from Kushwinder Mann with a copy of two receipts for wages paid to workers dated July 5, 2007.

10. Nowhere in the Employee's submissions is there any reference to or evidence that could be construed as addressing the issue of the Director's failure to observe the principles of natural justice. The face of the Determination also provides no hint as to such failure.
11. I find that the Employer has not established this ground of appeal.
12. I interpret the Employer's submission and the supporting letter and attachments as submissions that new evidence is now available that was not available at the time of the Determination, and that the Director erred in law in finding that the Employer was a farm labour contractor.
13. The submissions indicate that in a previous letter, dated July 20, 2007, the employer stated that Dhesi Farms did not provide farm labour to Mann Farms on July 5, 2007. That letter is in the Determination file and the Director considered that letter in making the Determination. Further, the text of the appeal submission contains the phrase: "I would like to state again..."
14. There is no specific submission that addresses why this should be considered new information or why this information was not available at the time of the Determination.
15. It is clear that this is not a new position, nor is it new information that was not available at the time of the determination. That ground of appeal fails.
16. The correspondence attached to the appeal submission is from Mann Farms. It confirms that Kushwinder Mann, the author of the letter, contacted an employee of Dhesi Farms and invited the employee and several others to come to Mann Farms to work on July 5, 2007. The letter also states that Mr. Mann picked up the workers on that date. This is inconsistent with the information provided to the Director during the investigation prior to the Determination, as Mr. Mann had earlier indicated that a representative of Dhesi Farms transported the workers to Mann Farms.
17. Every indication points to the reality that the Director had ample evidence on which to make an informed decision with respect to this matter. I find that the Director considered all of the evidence properly before him and made no error in law.
18. I find that each of the grounds of appeal fails. The Employer provided no persuasive evidence of error in law, failure to observe the principles of natural justice, or new evidence that was not available at the time of the Determination.

ORDER

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

Sheldon Seigel
Member
Employment Standards Tribunal