

An appeal

- by -

Brar Farm Contractors Ltd.
(the “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: Yuki Matsuno

FILE No.: 2007A/105

DATE OF DECISION: December 11, 2007

DECISION

SUBMISSIONS

Darshan Brar

for the Employer

Karry Kainth

for the Director of Employment Standards

OVERVIEW

1. The Employer, Brar Farm Contractors Ltd., appeals a Determination of the Director of Employment Standards (the “Director”) issued June 29, 2007 (the “Determination”), pursuant to section 112 of the *Employment Standards Act* (the “Act”).
2. In the Determination, a delegate of the Director (the “Delegate”) found that the Employer had contravened section 6(1)(f) of the *Employment Standards Regulation* (the “Regulation”) by failing to file with the Director an up-to-date list of the registration numbers and license numbers of each vehicle it uses for transporting employees. During road side checks carried out by the Employment Standards Branch Agriculture Compliance Team on May 29, 2007, two vehicles belonging to the Employer were checked and were found to be transporting employees. These two vehicles were not registered with the Director, as required under section 6(1)(f) of the *Regulation*. By letter dated May 30, 2007, the Delegate invited the Employer to respond to the ensuing investigation; however, the Employer never responded. The Delegate then issued the Determination which imposed an administrative penalty on the Employer in the amount of \$10,000.00 (this was the Employer’s third contravention within three years).
3. The Employer now appeals the Determination on the ground that the Director, represented by the Delegate, failed to observe the principles of natural justice in making the Determination.
4. The Employer’s appeal was filed late. The task before me is to decide whether the Tribunal should exercise its discretion to extend the appeal period. As no issues of credibility are present, I will make this decision based on the written materials before me: the Employer’s appeal submission, the Director’s submission, the Determination, and the Record.

ISSUE

5. Should the Tribunal exercise its discretion under section 109(1)(b) to extend the appeal period in this case?

ARGUMENT AND ANALYSIS

6. In deciding whether to exercise my discretion to extend the appeal period under section 109(1)(b), I must be satisfied of the following:
 - i) there is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
 - ii) there has been a genuine and on-going *bona fide* intention to appeal the Determination;
 - iii) the respondent party (*i.e.*, the employer or employee), as well as the Director, must have been made aware of this intention;
 - iv) the respondent party will not be unduly prejudiced by the granting of an extension; and
 - v) there is a strong *prima facie* case in favour of the appellant.
7. See *Niemesto*, BC EST #D099/96. These factors are not exhaustive.
8. The Tribunal will not grant extensions as a matter of course; will do so only where there are compelling reasons; and the burden is on the appellant to show that the time period for an appeal should be extended: *Moen & Sagh Contracting Ltd.*, BC EST #D298/96.
9. The Determination indicates that should the Employer wish to appeal, the appeal must be filed by August 7, 2007. The Employer's appeal submission was filed on September 14, 2007 and indicates two reasons for the late appeal: 1) the Employer's accountant, who was supposed to assist the Employer in filing the appeal, was late in getting back from holidays because of illness and did not recover until several weeks after his return; and 2) it took "a while" for the Employer "to complete missing information as I as busy with my son on his berry farm."
10. The Director is of the view that the appeal period should not be extended for the following reasons: 1) there is no good reason why the Employer could not meet the appeal deadline. The Delegate informed the Employer of the appeal process and reminded the Employer of the appeal deadline some time during the week of July 9 – 13, 2007, which gave the Employer about one month until the deadline of August 7 to file an appeal; 2) the appeal was filed an unreasonable amount of time (5 weeks) after the appeal deadline, during which the Employer could have made greater efforts and found other avenues to meet the deadline; 3) the Delegate was unsure as to the Employer's intention with respect to filing an appeal; and 4) the Employer does not have a strong enough case that might succeed if the Tribunal grants an extension.
11. Considering the submissions of the parties in light of the *Niemesto* factors, my view is that the Employer has not met the burden of showing that the time period for an appeal should be extended in this case.
12. The Employer's reasons for filing the appeal late do not account for the 5-week delay between the appeal deadline date and the date on which the Employer submitted his appeal. Nor do they explain why the Employer was unable to take other steps to ensure that the appeal was filed on time. There is no indication in the materials that the Employer had a genuine and ongoing *bona fide* intention to appeal the Determination or that the Director was aware of such an intention.

13. Lastly, I am not persuaded that the Employer has a strong *prima facie* case. The Employer alleges in its appeal that the Director failed to observe the principles of natural justice in making the Determination. It says that after a serious automobile accident involving a farm contractor vehicle occurred in March 2007, the Director stepped up the inspections carried out on farm contractor vehicles. The Employer's vehicles were inspected as a result of the increased enforcement, and the Employer experienced difficulties in getting its vehicles inspected and repaired after they were stopped.
14. None of these arguments are relevant to the question of whether the Director failed to observe the principles of natural justice in making the Determination. There is no indication that the Employer was deprived of the basic rights to know the case against it, to have an opportunity to respond, to have the matter decided by an unbiased decision maker, and to be given reasons for the decision.
15. The Employer has provided no compelling reasons for extension and there is no strong *prima facie* case. I decline to exercise my discretion to extend the appeal period.

ORDER

Pursuant to section 109(1)(b) of the Act, I deny the application to extend the appeal period.

Yuki Matsuno
Member
Employment Standards Tribunal