

An appeal

- by -

PMK Dhaliwal Enterprises Limited
(“PMK”)

- 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: Shafik Bhalloo

FILE No.: 2015A/130

DATE OF DECISION: November 19, 2015

DECISION

SUBMISSIONS

Mandeep Singh Dhaliwal

on behalf of PMK Dhaliwal Enterprises Limited

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), PMK Dhaliwal Enterprises Limited (“PMK”) has filed an appeal of a determination issued by a delegate of the Director of Employment Standards (the “Director”) on August 27, 2015. In that Determination, the Director found that PMK had contravened section 6(1)(f) of the *Employment Standards Regulation* (the “*Regulation*”) and levied an administrative penalty in the amount of \$500.00.
2. PMK appeals the Determination contending that the delegate failed to observe the principles of natural justice in making the Determination. PMK seeks to have the Determination cancelled.
3. In correspondence, dated October 6, 2015, the Employment Standards Tribunal (the “Tribunal”) informed the parties, among other things, that no submissions were being sought from the Director pending review of PMK’s appeal by the Tribunal and that, following such review, all or part of the appeal might be dismissed.
4. On October 21, 2015, the Tribunal received the section 112(5) “record” (the “Record”) from the Director, and a copy was delivered to PMK on October 22, 2015. There was no objection to the Record taken by PMK and, accordingly, the Tribunal accepts the Record as complete.
5. I have decided this appeal is an appropriate case for consideration under section 114 of the *Act*. Therefore, at this stage, I will assess the appeal based solely on the Reasons for the Determination (the “Reasons”), the Appeal Form and written submissions made on behalf of PMK by its sole director and officer, Mandeep Singh Dhaliwal (“Mr. Dhaliwal”), and my review of the Record that was before the Director when the Determination was being made. Under section 114(1) of the *Act*, the Tribunal has discretion to dismiss all or part of an appeal without a hearing of any kind for any of the reasons listed in that subsection. If satisfied the appeal, or part of it, has some presumptive merit and should not be dismissed under section 114(1) of the *Act*, the Director may be invited to file further submissions.

ISSUE

6. The issue at this stage is whether PMK’s appeal should be dismissed under section 114(1) of the *Act*.

THE FACTS

7. Based on a BC Online: Registrar of Companies – Corporation Search conducted by the delegate on August 10, 2015, PMK is a company incorporated under the laws of British Columbia on June 10, 2003, with Mr. Dhaliwal listed as its sole director and officer.
8. On January 7, 2014, PMK was issued a farm labour contractor (“FLC”) licence by the Employment Standards Branch (the “Branch”) with an expiry date of January 6, 2017.

9. As a precondition to PMK obtaining the FLC licence, section 5(2) of the *Regulation* requires the applicant to pass a written examination in order to satisfy the Director of his/her knowledge of the *Act* and *Regulation*. Before the written examination is administered by the Branch, applicants are issued an application package that includes a study guide delineating the relevant requirements of the *Act* and *Regulation*. Furthermore, during the licensing process, applicants are taken through an interview checklist to ensure their understanding of the requirements of the *Act* and *Regulation*. One of the requirements in the checklist is section 6(1)(f) of the *Regulation* which delineates duties of farm labour contractors, including a requirement to file with the Director an up-to-date list of the registration numbers 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. Mr. Dhaliwal successfully completed the examination and fulfilled the prerequisites leading to the issuance of the FLC licence to PMK.
10. On June 16, 2015, the Branch's Agriculture Compliance Team (the "Team"), together with Commercial Vehicle Safety and Enforcement ("CVSE") and WorkSafe BC, conducted roadside checks of farm labour vehicles. The Branch's involvement in this inter-agency effort is to inspect vehicles being used to transport farm workers for the purpose of ensuring compliance with the *Act* and the *Regulation*. During the roadside check, Pardeep Dhaliwal, who was the driver of a vehicle with licence plate no. HP 9641 ("Vehicle HP 9641"), identified Vehicle HP 9641 as one (1) of PMK's vehicles. He was using Vehicle HP 9641 to transport ten (10) workers to Toor Farms in Abbotsford, British Columbia.
11. Section 6(1) of the *Regulation* provides that a farm labour contractor must do all of the following:
 - ...
 - (f) file with the director
 - (i) an up-to-date list of registration numbers and licence numbers of each vehicle used by the farm labour contractor for transporting employees; and
 - (ii) 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.
12. The Branch's records indicated that the registration number for Vehicle HP 9641 expired on July 31, 2014, and, as of June 16, 2015, PMK had not filed an up-to-date registration number or an inspection certificate for the said vehicle.
13. On June 19, 2015, the delegate spoke with Mr. Dhaliwal at the Branch's Langley office. Mr. Dhaliwal asked the delegate to provide him with a list of PMK's vehicle licence plate numbers that he had registered with the Branch. The delegate provided Mr. Dhaliwal with the list, and informed him that PMK had not submitted inspection certificates for any of the vehicles. The delegate showed Mr. Dhaliwal that the registration number for Vehicle HP 9641 expired on July 31, 2014. Mr. Dhaliwal, in response, informed the delegate that he understood that a farm labour contractor is only required to send the Director licence and registration numbers for the vehicles once, when purchasing vehicle insurance for the first time, or if there is a new licence plate number. The delegate then informed Mr. Dhaliwal of the requirements of section 6(1)(f) of the *Regulation* and Mr. Dhaliwal confirmed he now understood these responsibilities.
14. On June 21, 2015, the Branch received, by fax, an up-to-date registration number and an inspection certificate for Vehicle HP 9641 from PMK.

15. On June 23, 2015, the delegate wrote to PMK explaining the roadside check results, and invited PMK to respond.
16. On July 6, 2015, Mr. Dhaliwal attended at the Branch's Langley office to speak with the delegate. He informed the delegate that he has never been required to provide vehicle inspection certificates in the past. Further, he informed the delegate that in July or August 2014 he informed another delegate of the Director that Vehicle HP 9641 had "continuous insurance" and the latter informed him that the Branch would automatically update Vehicle HP 9641's registration information and that there was no need to send an up-to-date registration number or valid inspection certificate for the said vehicle. The delegate was unable to confirm this information but noted in the Reasons that section 4 of the *Act* provides that the minimum requirements of the *Act* cannot be waived.
17. On August 27, 2015, the delegate made the Determination that PMK contravened section 6(1)(f) of the *Regulation* on June 16, 2015 for failing to provide an up-to-date registration number or inspection certificate for Vehicle HP 9641 and issued PMK an administrative penalty of \$500.00.

SUBMISSIONS OF PMK

18. In his very brief written submissions in support of PMK's appeal, Mr. Dhaliwal repeats what he indicated to the delegate before the Determination was made; namely, he called the Branch and spoke with a delegate to "re-register [his] 2 vehicle[s]" including Vehicle HP 9641, "because these two vehicle[s] have [the] same plate number in year 2015". Therefore, he submits, the administrative penalty of \$500.00 should be waived.

ANALYSIS

19. 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.
20. The burden is on the appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds listed in section 112(1) above.
21. As indicated previously, PMK submits that the Director failed to observe the principles of natural justice in making the Determination. Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; to present their evidence; and to be heard by an independent decision maker (see *Re: Imperial Limousine Services Ltd.*, BC EST # D014/05).
22. Having reviewed the record and Mr. Dhaliwal's written submissions, I find neither contains any evidence to support the natural justice ground of appeal. To the contrary, I am satisfied that PMK was afforded these procedural rights. More particularly, the delegate communicated the Branch's observations to Mr. Dhaliwal on June 19 when he spoke to Mr. Dhaliwal at the Branch's Langley office and, subsequently, in the preliminary determination letter of the Branch on June 23, 2015. PMK and Mr. Dhaliwal had an opportunity to respond and did so on June 19, 2015, and later on July 6, 2015, when Mr. Dhaliwal again attended at the Branch's Langley office to speak with the delegate. I also find that there is no evidence that the delegate was

partial in making the Determination. Therefore, I find no error in the delegate's decision in the Determination.

23. I note that while Mr. Dhaliwal states that he spoke with someone at the Branch in 2014 and obtained advice that there was no need to send an up-to-date registration number or valid inspection certificate for Vehicle HP 9641, I find this highly unlikely. Mr. Dhaliwal took the FLC examination and went through the interview checklist of the Branch which specifically refers to the duties of farm labour contractors, including the requirement to provide to the Director an up-to-date list of registration numbers and licence numbers of each vehicle used by a farm labour contractor to transport employees and to provide copies of inspection certificates for vehicles owned by a farm labour contractor. In the circumstances, Mr. Dhaliwal knew or should have known about the requirements of requirements of section 6(1)(f) of the *Regulation*. It is more probable that Mr. Dhaliwal simply forgot to provide the Director an up-to-date list of registration numbers and licence numbers of each vehicle used by PMK.
24. In these circumstances, I do not find that there is any basis for me to interfere with the Determination. I also note that once the delegate finds that a contravention of the *Act* or the *Regulation* has occurred, there is no discretion as to whether an administrative penalty will be imposed or the amount of that penalty, since penalty amounts are prescribed by the *Regulation*. I find there is no possibility this appeal can succeed, and it is dismissed under section 114(1)(f) of the *Act*.

ORDER

25. Pursuant to section 115 of the *Act*, I order that the Determination, dated August 27, 2015, be confirmed in the amount of \$500.00.

Shafik Bhalloo
Member
Employment Standards Tribunal