

An appeal

- by -

Grewal Berry Farm Inc.  
("Grewal")

- 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:** John Savage

**FILE No.:** 2007A/128

**DATE OF DECISION:** December 20, 2007



## TEST FOR EXTENDING TIME TO APPEAL

10. As appeals under the Act are statutory, the provisions of the Act are a code that must be complied with in order to perfect an appeal.
11. In considering whether an extension of time should be granted this Tribunal looks at a number of different factors:
- a) whether there is a reasonable and credible explanation for the failure to appeal on a timely basis,
  - b) whether there is a genuine ongoing *bona fide* intention to appeal the determination,
  - c) whether the Respondent and the Director have been made aware of the intention to appeal,
  - d) whether the Respondent will be unduly prejudiced by the extension, and
  - e) whether there is a strong *prima facie* case
- see: *Niemesto* BCEST #D 099/96, *Round Table Enterprises* BC EST #D052/05, *MAC's Convenience Store* BC EST #D 066/05, *Ell* BC EST #D D128/06.
12. These factors should be considered in light of the stated purposes of the Act.

## DISCUSSION AND ANALYSIS

13. Grewal, in support of their application, note that the appeal was, evidenced by their fax transmission report, only two hours late. The reason it is late, Grewal says, is because they did not know that the time limit for appeal expired at 4:30 p.m.
14. The Determination itself notes the time limit for the appeal.
15. Grewal's submission does not otherwise address the factors to be considered in granting an extension of time.
16. For example, as noted by the Director, there is no reference to their being an ongoing *bona fide* intention to appeal, although, in my view, this is not especially germane where the appeal is so shortly out of time. The same applies to the point the Director makes that he was not made aware of the intention to appeal.
17. These factors, in my view, are more significant when there is a substantial delay in delivering the notice of appeal.
18. In my opinion this application turns on whether there is a strong *prima facie* case. The Director says there is none. The stated ground of appeal is that there was a breach in natural justice in making the Determination. The Appellant's submission nowhere discusses or refers to facts or circumstances that could give rise to a breach of natural justice and the record, filed by the Director, belies this assertion.
19. The record shows that the Employment Standards Branch Agricultural Compliance Team (the "Team") conducted a site visit at Driediger Farms Ltd. in Langley. The purpose of the site visit was to ensure compliance with the Act and Regulations. Members of the Team interviewed the workers who confirmed that they were employed by and paid by Grewal. The owner of Driediger Farms Ltd. confirmed that they

had engaged Grewal to supply farm labour. They thought that Grewal was a licensed farm labour contractor.

20. Grewal was not a licensed farm labour contractor. Driediger were informed of their own potential liability if Grewal did not pay the employees. Driediger then said they would pay the employees directly to avoid any liability issues if Grewal did not pay them.
21. By correspondence dated August 14, 2007, to Grewal the Director set forth his tentative findings to Grewal and invited a response. Responses were received and then the Director issued his Determination.
22. In my opinion, this pattern of events does not show any breach of natural justice. The Team interviewed all of the parties at the site. The Director's tentative findings were memorialized in a letter to Grewal who was given an opportunity to reply. So, by reading the letter, Grewal was aware of the issues, Grewal did respond, which response was considered by the Director before issuing his Determination. Thus, the Director gave Grewal notice of the issue and the evidence, and gave Grewal the opportunity to make submissions concerning both. The opportunity was taken up.
23. There is no merit to the claim that there was a breach of natural justice.
24. Moreover, as I read the evidence and findings, there is no merit to an appeal on the underlying substantive issue.
25. Grewal agreed to provide labour to Driediger to harvest blueberries. Grewal transported the workers, had a representative on the site, and was to pay the workers as arranged with Driediger. In doing so, Grewal was acting as a farm labour contractor.
26. Grewal's arguments that (1) they overlooked requiring Driediger to pay the workers directly because it was a busy time of year, and (2) that Driediger did pay the workers, albeit after being advised of their potential liability for wages when using an unlicensed farm labour contractor, does not create an excuse. As long as Grewal was acting as a farm labour contractor it was required to be licensed.
27. In the circumstances, the purposes of the Act would not be served by extending the time for an appeal under section 109(1)(b).

## **ORDER**

28. The application to extend the time for appealing the Determination is refused.

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**John Savage**  
**Member**  
**Employment Standards Tribunal**