

An appeal

- by -

0752871 B.C. 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:** Carol L. Roberts

**FILE No.:** 2010A/152

**DATE OF DECISION:** December 16, 2010

## DECISION

### SUBMISSIONS

Sarjinder Dhaliwal on behalf of 0752871 B.C. Ltd.

Ravi Sandhu on behalf of the Director of Employment Standards

### OVERVIEW

1. This is an appeal by 0752871 B.C. Ltd. (“the Employer”), pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination of the Director of Employment Standards (the “Director”) issued September 22, 2010.
2. The Employer is a licensed farm labour contractor as defined by section 1 of the *Act*. Following an investigation, the Director’s delegate determined that the Employer had contravened sections 6 and 6.1 of the *Employment Standards Regulation* (the “*Regulation*”) and imposed two \$500.00 administrative penalties on the Employer for the contraventions.
3. The Employer says that the Director’s delegate failed to observe the principles of natural justice in making the Determination and seeks to have the Determination cancelled.
4. Section 36 of the *Administrative Tribunals Act* (“*ATA*”), which is incorporated into the *Employment Standards Act* (s. 103), and Rule 16 of the Tribunal’s *Rules of Practice and Procedure* provide that the Tribunal may hold any combination of written, electronic and oral hearings. (see also *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575). This appeal is decided on the section 112(5) “record”, the written submissions of the parties and the Reasons for the Determination.

### FACTS

5. The Employer’s farm labour contractor (FLC) licence was issued in 2008 for up to 53 employees. It expires December 29, 2011. As part of the FLC licensing process, a representative of the employer was required to pass a written examination to satisfy the Director of its knowledge of the *Act* and *Regulation*. FLC applicants are also interviewed to ensure they understand the requirements of the *Act* and *Regulation*.
6. On August 5, 2010, after the Agricultural Compliance Team conducted a work site visit at Cheema & Sons Farm to ensure compliance with the *Act* and *Regulation*, a delegate of the Director determined that the Employer had contravened sections 6 and 6.1 of the *Regulation* in failing to file with the director an up-to-date list of all vehicles used for transporting farm workers and by failing to post a notice within the vehicle with respect to vehicle and passenger safety requirements.
7. On August 12, 2010, the delegate notified the Employer of his observations and offered it an opportunity to respond to them. The response was to have been provided by August 23, 2010. In her August 27, 2010, response, Ms. Dhaliwal stated that an acquaintance (Mr. Johal) had delivered the registration and inspection forms to the Branch. Ms. Dhaliwal submitted an affidavit from Mr. Johal in which he swore that he dropped off ICBC Insurance and Commercial Vehicle inspection reports at a Branch office.

8. Ms. Dhaliwal also contended that she did not receive the Director's safety requirement notice respecting vehicle and passenger safety under the *Motor Vehicle Act* and *Workers Compensation Act*. She apologized for the oversight and indicated that she had subsequently obtained the proper notices.
9. The delegate determined that the Director did not have any registration or inspection forms relating to the vehicle in question at the time of the work site visit. The delegate also noted that the method of delivery for the documents was inconsistent with the methods of delivery previously used by the Employer.
10. The delegate determined that Ms. Dhaliwal's argument that the Director had not provided a notice of safety requirements was not a defence to the contravention. The delegate noted that the Employer was well aware of the licensing requirements and that copies of the vehicle safety notice were readily available on the Employment Standards website.
11. The delegate found that the Employer had contravened the *Regulation*.

## ISSUES

12. Did the delegate fail to comply with the principles of natural justice in making the Determination?

## ARGUMENT AND ANALYSIS

13. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
  - the director erred in law;
  - the director failed to observe the principles of natural justice in making the determination; or
  - evidence has become available that was not available at the time the determination was being made
14. The Appellant has the burden of establishing the grounds of the appeal. The Employer must provide persuasive and compelling evidence that the delegate failed to observe the principles of natural justice.
15. Principles of natural justice are, in essence, procedural rights that ensure that parties know the case being made against them and the opportunity to reply, and the right to have their case heard by an impartial decision maker.
16. The delegate notified the Employer of the Compliance Team's observations and invited the Employer to respond. The Employer made submissions which, although past the deadline provided, were fully considered by the delegate when arriving at his conclusions. I find no basis for this ground of appeal.
17. The Employer appeals only the section 6 contravention. As the submissions appear to suggest that the delegate erred in law, I also will address those grounds.
18. Ms. Dhaliwal says that it should not matter to the Director whether the documents were delivered in person, rather than by fax. She contends that the relevant documents were delivered to the Branch in January 2010 and suggests that if the Branch had no record of the Employer's documents they were misplaced by an employee. She contends that it is unfair for the Director to impose an administrative penalty on the Employer for, in essence, the incompetency of staff at the Branch office. She argues that a reasonable person should not be asked to have the office acknowledge receipt of the documents. She also submits that an

affidavit of a third party should be sufficient proof to establish that the relevant documents were delivered to the Branch.

19. The delegate submits that all of the Employer's arguments were considered before issuing the Determination and addressed in the Determination. The delegate says that a disincentive is necessary to promote compliance with the *Act* and to prevent a repeat contravention.

20. Section 6 provides as follows:

6 (1) A Farm Labour Contractor (FLC) must do all of the following:

(f) file with the Director

(i) an up to date list of the registration numbers and licence numbers of each vehicle used by the FLC for transporting employees, and

(ii) if the vehicle is owned by the FLC, copies of the inspection certificate and other records that must be maintained under Section 25 of the Motor Vehicle Act Regulations.

21. The burden is on the Employer to demonstrate that the delegate erred in law.

22. The *Regulation* obliges FLC to file certain documents with the Director in order to maintain its licence. The Employer has the burden of demonstrating that the documents were filed. The Employer contends that the delegate erred in not accepting the affidavit as proof of delivery of those documents.

23. The delegate considered the fact that, for the previous two years, the Employer submitted the required documents to the Branch by fax or mail. The delegate also considered the Employer's affidavit and, although not expressly stated in the Determination, appears to have discounted it. I note that the affidavit is undated. I infer it was sworn at about the time the Employer responded to the delegate's letter, which was beyond the date provided for the response. In his affidavit, Mr. Johal affirmed that he dropped off the relevant documents to "the office located on the 2nd floor near IGA", "on or about" January 12, 2010, to "a woman at the front desk".

24. I do not find that the delegate erred in giving little weight to this affidavit. In my view, the affidavit is sufficiently imprecise to 'prove' that the Employer complied with section 6 of the *Regulation*. Given the Employer's obligations, I am not persuaded that the delegate erred in finding a contravention.

25. The appeal is dismissed.

## ORDER

26. I Order, pursuant to Section 115 of the *Act*, that the Determination, dated September 22, 2010, be confirmed.

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**Carol L. Roberts**  
Member  
Employment Standards Tribunal