

An appeal

- by -

Bains Labour Contractor (1999) Ltd.  
("Bains")

- 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*

**ADJUDICATOR:** April D. Katz

**FILE No.:** 2000/872

**DATE OF DECISION:** March 26, 2001



An Employment Standards Officer was able to find one of the 4 workers after July 11, 2001. In the interview with this worker she confirmed that she worked on July 11, 2000 with her friend, who was a registered employee of Bains. When she was questioned further she became evasive.

Bains had been found in breach of the *Act* and *Regulation* on 5 other occasions. Specifically Bains was found to have breached

- a) sections 13(1), requirement for a licence, and 9(1), hiring a child under 15 without the Director's permission in August 1997;
- b) section 6(1)(f) duties of a Farm Labour Contractor on July 6, 1998;
- c) section 6(4) requirement to keep daily log on July 5, 1999;
- d) sections 28, requirement to keep payroll records, and 7 cancellation of licence on September 7, 1999;
- e) sections 6(4) and 6(1)(f) on July 13, 2000; and
- f) sections 13(1), 28, and 7 on December 13, 2000.

## ANALYSIS

The onus of proving the Director has erred in a Determination is on the appellant in an appeal to the Tribunal. Bains is appealing the Director's decision to cancel Bains' Farm Labour Contractor's licence. The Director's authority to cancel a farm labour contractor's licence is set out in section 7 of the *Regulation*, which provides as follows.

7. The director may cancel or suspend a farm labour contractor's licence in any of the following circumstances:
  - a) the farm labour contractor made a false or misleading statement in an application for a licence;
  - b) the farm labour contractor is in breach of a condition of the licence;
  - c) the farm labour contractor or an agent of the farm labour contractor contravenes the Act or this regulation.

Under section 7, the Director of Employment Standards has the discretion to issue, suspend and cancel farm labour licences under the *Act* and *Regulation*. In the Determination the Director's Delegate has set out the reasons for cancelling the licence. The Director has supported the decision with the list of previous breaches of the *Act* which were not disputed.

The appeal has not provided any evidence to support a different conclusion on the facts or an error of law.

There was no evidence in the appeal of an error in the Determination. The Determination is therefore confirmed.

The appeal is denied.

**CONCLUSION**

Based on the evidence before me I find that Director has exercised her discretion reasonably based on the facts available. I deny the appeal and confirm the Determination.

**ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated December 13, 2000 be confirmed.

***APRIL D. KATZ***  

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**April D. Katz**  
**Adjudicator**  
**Employment Standards Tribunal**