



An appeal

- by -

Dhillon Labour Contractors Ltd.
("Dhillon")

- 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

TRIBUNAL MEMBER: Kenneth Wm. Thornicroft

FILE No.: 2004A/116

DATE OF DECISION: August 31, 2004



DECISION

SUBMISSIONS

Dalbir Dhillon

for Dhillon Labour Contractors Ltd.

Sharn Kaila

for the Director of Employment Standards

INTRODUCTION

This is an appeal filed by Dhillon Labour Contractors Ltd. (“Dhillon”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”). Dhillon appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on June 8th, 2004 (the “Determination”).

By way of the Determination, Dhillon was assessed a \$500 monetary penalty for having contravened section 6 of the *Employment Standards Regulation*. Section 6 of the *Regulation* sets out various duties, including record-keeping obligations, for all farm labour contractors. Dhillon says that the Determination should be cancelled because the delegate failed to observe the principles of natural justice in issuing it-- see section 112(1)(b) of the *Act*.

On August 23rd, 2004 the Tribunal’s Vice-Chair wrote to the parties advising them that this appeal would be adjudicated based on their written submissions and that an oral hearing would not be held (see section 107 of the *Act* and *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575). I now have before me a one-paragraph submission from Dhillon filed on July 12th, 2004 and the delegate’s submission filed on July 27th, 2004.

THE DETERMINATION

The “Reasons for Determination” indicate that Dhillon is a licenced farm labour contractor (see section 5 of the *Regulation*). Dhillon’s original licence was issued on March 25th, 2002 and allowed it to engage 9 employees; a second licence was issued on January 1st, 2003 (and expires on December 31st, 2005) that permits the hiring of 30 employees.

On April 7th, 2004 the delegate issued a “demand” to Dhillon for production of certain payroll records spanning the period January 1st to December 31st, 2003; this demand was lawfully issued pursuant to section 85(10(f) of the *Act*. Among other things, the demand directed Dhillon to produce “daily logs as required under section 6(4)(5) [sic] of the *Regulation* including the volume or weight of fruit, vegetable, berry or flower crop picked in each day by each worker (section attached)”.

Section 6(4) of the *Regulation* states that farm labour contractors must keep a daily log that includes the names of all employed farm workers and a record of their daily production including the type of crop and the volume picked each day.

In response to the demand, Dhillon produced certain records on May 10th, 2004 (I note that the demand required production as of May 4th, 2004) but these records were deficient in that the logs did not include “the volume or weight picked in each day by each worker” [see section 6(4)(e)] nor the work locations for



each worker [see section 6(4)(b)]. Apparently, a Dhillon representative subsequently spoke with the delegate (on May 27th, 2004) and conceded that Dhillon did not have logs showing the particulars of the crop picked each day by Dhillon workers.

Dhillon was advised, in writing, with respect to its section 6 duties as part of the licensing process and thus knew, or ought to have known, about its obligations with respect to daily logs. Mr. Dhillon signed a checklist which noted that the Director would have “zero tolerance” for, among other things, record-keeping violations.

Section 29(1) of the *Regulation* establishes a \$500 monetary penalty where a party has not been assessed a penalty in the prior three years for the same contravention. Accordingly, the delegate issued a \$500 monetary penalty.

ANALYSIS

Dhillon submits that the Determination should be cancelled since it was denied natural justice. However, there is not a single assertion in its materials that would suggest that the principles of natural justice were offended in this case. Indeed, in its very brief submission, Dhillon acknowledges that it did not keep the proper records but says that it thought it did not have to keep such records because its employees were paid hourly rather than on a piecework basis. However, a farm labour contractor’s section 6 duties (including the obligation to keep and maintain records) apply regardless of the method of payment utilized for its employees.

Dhillon asks that the penalty be “waived” and says that it will comply with its record-keeping obligations from now on. However, in the face of a clear contravention, and in the absence of any lawful defence, the \$500 penalty was quite properly levied and this Tribunal has no jurisdiction to cancel it simply because Dhillon has promised not to contravene the *Regulation* in the future.

This appeal is entirely without merit.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$500.**

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal