

An appeal

- by -

LS Labour Solutions Inc.

- 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 Ann Hart

**FILE No.:** 2005A/136

**DATE OF DECISION:** October 3, 2005

## INTERIM DECISION

### SUBMISSIONS

Ronnie Gill	on behalf of LS Labour Solutions Inc.
Sharn Kaila	on behalf of the Director of Employment Standards

### OVERVIEW

1. This Interim Decision is issued with respect to an appeal by LS Labour Solutions Inc. under section 112 of the *Employment Standards Act* (the “*Act*”) of a Determination issued on January 6, 2005 (the “Determination”) by Sharn Kaila, a delegate of the Director of Employment Standards (the “Director”).
2. The appeal was originally filed outside of the time frame permitted in the *Act*, and I issued a Decision concerning the timeliness issue dated 27 July 2005 (BC EST 2005A/67). In that Decision, I allowed the request of the appellant for an extension of time to file the appeal.
3. The parties were subsequently invited by the Tribunal to file written submissions concerning the merits of the appeal.

### BACKGROUND

4. I provided the following background information in the Decision on the timeliness issue dated 27 July 2005 (BC EST 2005A/67):

The appellant, LS Labour Solutions Inc., is a licensed farm labour contractor. Mandeep Bahniwal was employed by the appellant as a farm labourer for the period from March 23, 2004 to May 7, 2004, and was paid \$8.00 per hour. In her complaint filed under the *Employment Standards Act*, Ms. Bahniwal alleged that she had not been paid for 224 hours of work during the period in which she was employed by the appellant.

In the Determination, the delegate for the Director concluded that LS Labour Solutions Inc. had contravened the *Act* by failing to pay to Mandeep Bahniwal all wages due upon termination of employment. LS Labour Solutions Inc. was ordered to pay to Ms. Bahniwal the sum of \$1792.00 for wages pursuant to section 18 of the *Act*; \$71.68 for annual vacation pay pursuant to section 58 of the *Act*; and \$48.72 in accrued interest payable under section 88 of the *Act*. The delegate for the Director also imposed a \$500 penalty for the contravention of the *Act*, pursuant to section 29(1) of the *Employment Standards Regulation*.
5. The appeal is brought on the grounds that the Director had failed to observe the principles of natural justice in making the Determination, and that there was new evidence which was not available at the time the Determination was made.

## **SUBMISSIONS**

6. Ms. Gill wrote about the evidence that the witnesses Resham Kaur Padda and Surjit Kaur Buttar had given at the fact-finding meeting before the delegate for the Director, and submitted that, although the witnesses could not remember the dates in question, their testimony was otherwise clear on the nature of the conversation, what activity occurred, where it occurred and who was there.
7. The delegate for the Director wrote to the Tribunal to advise that he had no further submissions to make with regard to the merits of the appeal.

## **ISSUE**

8. The issues to be addressed in this case are the following.
  - Did the Director fail to observe the principles of natural justice in making the Determination?
  - Is there new evidence which was not available at the time the Determination was made?

## **NATURAL JUSTICE**

9. Principles of natural justice are, in essence, procedural rights to ensure that parties have an opportunity to know the case against them; the right to present their evidence; and the right to be heard by an independent decision maker.
10. No evidence was adduced, and no submissions were made to support the assertion that the delegate for the Director had failed to observe the rules of natural justice. There is also nothing apparent on the record which persuades me that there was an infringement of the principles of natural justice.
11. The delegate for the Director provided reasons as to why he had given little weight to the affidavits of the witnesses Surjit K. Buttar and Resham K. Padda, and why he had found the employer's evidence to be inconsistent.
12. For these reasons, I dismiss the appeal on the basis that the Director failed to observe the principles of natural justice in making the Determination.

## **NEW EVIDENCE AND NATURE OF THE PROCEEDINGS**

13. I turn now to the assertion of the appellant that there is evidence which was not available at the time the Determination was made, and the nature of the proceedings which should be undertaken to address this issue.
14. In making a decision on the merits of an appeal, the Tribunal may consider the written submissions of the parties and conduct an oral hearing; or may render the decision based on the written submissions of the parties alone.

15. Ronnie Gill indicated on the original Appeal Form that she sought an oral hearing in this matter for the following reason: “to ensure all witnesses can be cross examined and Malkiat Gill who was out of the country can testify to the facts of the \$1000.00 cash payment.”
16. Mr. Kaila did not make a submission about whether an oral hearing should be conducted or whether the decision should be based on the written submissions of the parties only.
17. The appellant claimed that since the fact-finding meeting, additional documents had been found in the shredding basket which had been written by Ms. Bahniwal, and which demonstrated that Ms. Bahniwal was paid all the amounts owing to her. The appellant submitted copies of the new evidence found, as well as a written opinion of the Examiner of Questioned Documents, Donald N. Brown, of Pacific Forensic Science Consultants and Services Ltd., who examined the handwriting on the documents in question. The appellant maintained that this evidence would establish that Ms. Bahniwal was not truthful in her testimony in the fact-finding meeting, or in filing her complaint under the *Employment Standards Act*; and that she was paid in full, and no wages were owed to her.
18. The allegations made by the appellant are serious. In my view, an oral hearing should be conducted by the Tribunal in this case in order to fully consider the new evidence. However, I have determined that the matters to be addressed in the hearing will be limited to: the new documentation which was found in the shredding basket after the fact-finding meeting before the delegate for the Director; the sheet of paper submitted to the delegate for the Director which the appellants claim is a list of hours written in the complainant’s own handwriting, with the notation “paid \$608” written on it; the documentation concerning the handwriting analysis; and any oral testimony, or documentation already filed with the appeal, concerning the evidence outlined above in this paragraph.
19. As noted above, I have decided to allow the appellant to enter into evidence at the hearing the sheet of paper submitted to the delegate for the Director which the appellant claims is a list of hours written in Ms. Bahniwal’s own handwriting with the notation “paid \$608” written on it. The reason for this decision is that the appellant could not have known prior to the original fact-finding meeting before the delegate for the Director that Ms. Bahniwal would deny that it was her handwriting on that document. The handwriting analysis concerning that document was produced after the fact-finding meeting before the delegate for the Director.

### **EVIDENCE WHICH WILL NOT BE CONSIDERED IN THE ORAL HEARING**

20. I will decline to hear the oral testimony of Malkiat Gill which the appellants seek to present. The appellants indicate that Malkiat Gill had been out of the country at the time of the fact-finding meeting before the delegate for the Director. No other reasons were provided by the appellants as to why Malkiat Gill was unable to be present at the fact-finding meeting. Other than the assertion of Ronnie Gill that Malkiat Gill was out of the country at the time of the original fact-finding meeting, there was no evidence to establish that this witness was not available to testify at the original fact-finding meeting before the delegate for the Director.
21. There was no indication that an adjournment was requested so that Malkiat Gill could be present at the fact-finding meeting. No affidavit, or other documentary evidence was presented from Malkiat Gill. I cannot find that the evidence of Malkiat Gill was not available at the time of the original fact-finding meeting. The appeal is not a second opportunity to present the case.

22. Witnesses Surjit K. Bhuttar and Resham K. Padda testified before the delegate for the Director, and were subject to cross-examination. The delegate considered their testimony, together with their affidavit evidence. I can find no reason to interfere with the findings of the delegate for the Director concerning the evidence of these two witnesses. No further evidence from these witnesses will be considered.

## **CONCLUSION**

23. The allegation that the Director had failed to observe the principles of natural justice in making the Determination was dismissed.
24. The Tribunal will conduct an oral hearing concerning the allegation that there is new evidence which was not available at the time the Determination was made.
25. The only new evidence which will be considered will be the following:
1. The new documentation which was found in the shredding basket after the fact-finding meeting before the delegate for the Director;
  2. The sheet of paper submitted to the delegate for the Director which the appellant claims is a list of hours written in the complainant's own handwriting, with the notation "paid \$608" written on it;
  3. The documentation concerning the handwriting analysis.
  4. Any oral testimony, or documentation already filed with the appeal, concerning the evidence outlined in the three points above.
26. The Tribunal will contact the parties to notify them of the date and time of the oral hearing.

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**Carol-Ann Hart**  
**Member**  
**Employment Standards Tribunal**