

**EMPLOYMENT STANDARDS TRIBUNAL**  
In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act R.S.B.C. 1996, C. 113*

- by -

Coastview Fruit Packers Inc.  
("Coastview")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Mark Thompson

**FILE NO.:** 98/022

**DATE OF DECISION:** April 22, 1998

## **DECISION**

### **OVERVIEW**

This is an appeal under Section 112 of the *Employment Standards Act*, (the “Act”) by Coastview Fruit Packers Inc. (“Coastview”) against a Determination (the “Determination”) issued by a Delegate of the Director of Employment Standards (the “Director”) on December 19, 1997. The Determination found that Coastview owed a former employee, Mr. Jagdev Sahota (“Sahota”), a total of \$14,260.19 in unpaid wages, overtime, vacation pay and statutory holiday pay. Coastview launched an appeal on the grounds that it had not been provided a proper opportunity to rebut Sahota's allegations or other evidence considered by the Director's Delegate. Coastview also requested an oral hearing to test the credibility of the “various parties involved” in the case.

### **ISSUE TO BE DECIDED**

The central issue to be decided in this case was whether the Director's Delegate had sufficient evidence on which to base his Determination. A secondary issue is Coastview's request for an oral hearing.

### **FACTS**

Sahota was employed by Coastview as a bus driver at an hourly rate of pay of \$9.00. His principal function was to drive farm workers to and from fields for Coastview. He stated that he worked various hours seven days a week from May 5, 1997 until he quit on August 24, 1997 because he was required to leave Canada when his work permit expired. Sahota filed a complaint with the Employment Standards Branch claiming unpaid wages, overtime pay, statutory holiday pay and vacation pay for the period in question. He provided the Director's Delegate with information on his pay received in July and August 1997, plus a calendar that recorded hours worked in May, July and August. In addition, Sahota produced work sheets he had used to record daily hours worked for the months of May through August 1997. Sahota also provided the Delegate with a British Columbia Trucking Association Driver's Daily Log showing kilometers driven on Coastview vehicles. The log contained information on three license plates for the motor vehicles driven and identified Sahota as the bus driver on one of the vehicles. The Director's Delegate found that one of the vehicles was identified as used by Coastview in its farm labour contractor's license application for transporting farm workers. The other two vehicles were owned by or leased to R. Nijjer and Sons Ltd. Mr. Rajinder Nijjar was the appellant in this case.

A representative of the Employment Standards Branch telephoned eight persons who were employed by Coastview during the summer of 1997. All eight individuals stated that they

were driven to various work locations during a period of three to four months by Sahota, whom they knew by the nickname of "Rana."

Sahota referred the Director's Delegate to a relative, Mr. Santokh Singh Nirbain. Mr. Nirbain stated that Sahota had entered Canada as a refugee and received a work permit. Ultimately, Sahota's application for refugee status failed, and he was deported from Canada by immigration authorities. According to Mr. Nirbain, Sahota had lived with him for some time, and he knew that Sahota worked for Coastview as a bus driver.

A representative of the Employment Standards Branch spoke to an employee of Driedger Farms in Langley. This individual confirmed that he knew Sahota as Rana and that he drove a bus for Coastview in 1995 and again during the three to four months in the summer of 1997. In support of his complaint, Sahota provided pictures of himself and other employees of Coastview in the Cache Creek area. One picture showed Sahota near one of the vehicles registered to Coastview. Other pictures showed Sahota with other persons, two of whom stated that Sahota had been their driver while they were employed by Coastview. A supervisor at Driedger Farms identified a picture of Sahota as the person he knew as Rana when he was a driver for Coastview in the summer of 1997. Similarly, the owner of Ramji's Garden Fresh Produce identified Sahota in a picture as an individual who had worked for him in May 1997 and had quit to work for Coastview. This individual subsequently saw Sahota driving Coastview's van to a farm on two or three occasions. A co-worker from Coastview identified Sahota in a picture taken at a ginseng farm in 1997. A supervisor at another ginseng farm recognized Sahota as a driver who worked for Coastview as a driver at a site near Cache Creek.

Coastview told the Director's Delegate that Sahota had not worked for him at all in 1997, but had come to Coastview work sites to visit friends. A friend of Sahota's had worked for Coastview and the friend may have allowed Sahota to drive for him for a few days. Mr. Nijjar stated that Coastview would not have hired Sahota because he lacked a valid work permit. He did acknowledge that Sahota had worked for Coastview in 1995.

Representatives of the Employment Standards Branch interviewed Mr. Nijjar in the course of their investigation. Mr. Nijjar was invited to attend at the Employment Standard's Branch office in Abbotsford to discuss Sahota's complaint, but declined to appear. The Director's Delegate stated that representatives of the Director spoke with Mr. Nijjar on at least two occasions.

The Determination found that Sahota had worked for Coastview between May 5, 1997 and August 24, 1997. Because Coastview did not have any records, the Director's Delegate accepted Sahota's records of time he worked. Based on this information, the Determination found that Coastview had not paid Sahota for hours worked, vacation pay and statutory holiday pay. With interest, the amount due to Sahota was \$14,260.19.

Coastview filed an appeal of the Determination on the grounds that the Director's Delegate had not considered its information or did not provide it with an opportunity to substantiate its position. It requested an oral hearing to resolve the issue credibility. However, Sahota

informed the Director's Delegate that he would be unable to attend the hearing. Counsel for Coastview stated that he wished to cross-examine other individuals mentioned in the Determination as having provided information to the Director's Delegate.

## **ANALYSIS**

In an appeal, the Appellant bears the onus of establishing that a determination must be varied or cancelled. To meet that onus, the appellant must provide some evidence or argument that challenges the conclusions in the determination. The Director's Delegate assembled an impressive body of evidence in support of the findings in the Determination, in particular that Sahota was an employee of Coastview from May 5 through August 24, 1997. Coastview did not provide any evidence to rebut this conclusion in the Determination.

Mr. Nijjer, an officer of Coastview, spoke to representatives of the Director on at least two occasions and was invited to present information on the complaint at the offices of the Employment Standards Branch, but did not accept that invitation. This Tribunal normally does not permit a party to refuse to participate in the procedures leading to a Determination and then appeal on the basis of information which it could have, but did not, produce to the Director's Delegate. See *City Heights Management*, BC EST #D392/97. In this case, Coastview does not even assert that it has additional information to support its appeal. It merely seeks to undermine the credibility of a large number of people who cooperated with the Director's Delegate in addressing Sahota's complaint.

Section 28 of the Act requires an employer to keep payroll records for each employee. When an employer fails to meet the requirements of Section 28, the Director, and this Tribunal, may rely on records supplied by a complainant. See *Ali*, BC EST #D436/97.

The Tribunal is not required to hold an oral hearing. All parties were given the opportunity to submit evidence and argument bearing on the substance of the appeal. Counsel for Coastview merely asserted that the evidence on which the Director's Delegate was incorrect. An oral hearing may be necessary to test the credibility of witnesses when contradictory versions of events are available on the record. Coastview has not provided any evidence to challenge the evidence that the Director's Delegate considered in the Determination. Counsel for Coastview further argued that the Director's Delegate did not consider Coastview's information. Based on the record available, I conclude that Coastview did not avail itself of the opportunity to provide the Delegate with information required by statute during the proceeding that led to the Determination. The appeal did not even suggest what information Coastview might provide. The Director's Delegate assembled ample documentary evidence and statements from disinterested parties to substantiate the conclusions in the Determination.

## **ORDER**

For these reasons, the Determination of December 19, 1997 is confirmed.

**Mark Thompson**  
**Adjudicator**  
**Employment Standards Tribunal**