

An appeal

- by -

All-Season Labour Supplies Ltd.
(the "Appellant")

- 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: Ib S. Petersen

FILE No.: 2002/72

DATE OF DECISION: May 15, 2002

Section 18(4)(d) of the *Regulation* imposes an obligation to “keep” certain picking information. There is, in this case, no dispute that the Appellant did not keep the required information. The Appellant argues that its employees are compensated on an hourly basis and that the farmer, therefore, does not create records of weight picked each day. This, says the Appellant, is appropriate given the purposes of the Act (Section 2). In the alternative, the Appellant says that the obligation is only to “keep” certain records created by the farmer and not to “create” records of volume and weight picked.

The Delegate opposes the appeal. The Delegate points out that the *Regulation* imposes an obligation to keep certain information, including picking cards. This obligation is imposed on the farm labour contractor, not the farmer. If the Appellant’s interpretation of the statute is correct, there would, in effect, be no obligation to keep information. The Delegate also points to the practice in the industry, the use of “picking cards” which records weight picked by each worker.

I agree with the Delegate. The obligation under the Regulation is on the farm labour contractor, as the employer, to keep certain information. The obligation is not on the farmer. In my view, this means that the farm labour contractor must ensure that this information is created, to use the Appellant’s terminology, in order that it can be kept. The Appellant’s interpretation of the *Regulation* would, in effect, have the result that there is no obligation to keep records. That defies common sense. In short, the Appellant contravened Section 18(4)(d) of the *Regulation*.

The Director’s authority under Section 79(3) of the *Act* is discretionary. Section 81(1)(a) of the Act requires the Director to give reasons for the Determination to any person named in it. As noted in the Determination, All Seasons Labour Supplies Ltd. was aware of the requirement to keep picking records through the licensing process. As argued by the Delegate, the penalty is a dis-incentive for further contraventions of the *Act* and *Regulations*. In brief, there is sufficient explanation for the exercise of the Director’s discretion.

Section 29 of the *Regulation* provides that the penalty is \$00.00 in the circumstances at hand. The penalty in this case was the amount provided by legislation. It cannot, therefore, be argued that the delegate erred in this aspect of the Determination.

Briefly put, I am not persuaded that the Delegate erred.

ORDER

Pursuant to Section 115 of the Act, I order that the Determination in this matter, dated January 28, 2002 be confirmed.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal