

An appeal

- by -

Gidda Bros. Orchards Ltd.

- 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:** M. Gwendolynne Taylor

**FILE No.:** 2001/108

**DATE OF DECISION:** May 4, 2001

## DECISION

### SUBMISSIONS

Sarwan Gidda & Kaldep Singh Gidda (Kal) on behalf of Gidda Brothers Orchards Ltd. (“Gidda”)

Larry Bellman & Erwin Schultz on behalf of the Director of Employment Standards (the “Director”)

### OVERVIEW

Pursuant to section 112 of the *Employment Standards Act*, Gidda filed an appeal from a Determination by the Director dated January 19, 2001. The Director found that Gidda had contravened section 46 of the *Act* by failing to produce proper payroll records. The Director ordered Gidda to cease contravening and to pay a penalty of \$500.00.

On February 6, 2001, Gidda appealed the Determination alleging that the company had sent the requested records but the Director had refused delivery. Gidda is willing to provide any records requested, but will not incur any expense in delivering them.

### ISSUE

1. Did Gidda contravene section 46 of the *Employment Standards Act*?
2. Does Gidda have to pay a penalty of \$500.00 pursuant to section 98(1) of the *Act* and section 28(a) of the *Employment Standards Regulation*?

### THE FACTS

The Okanagan Agricultural Labour Compliance Team inspected Gidda’s farm site on June 23, 2000. They interviewed two workers who identified themselves as employees of Gidda.

On October 12, 2000, as a result of the inspection, Industrial Relations Officer, Erwin Schultz, issued a Demand for Employer Records, pursuant to section 85 of the *Act*. The Demand required production of employment records for all employees from January 1, 2000 to August 31, 2000, including

- all records relating to wages, hours of work, and conditions of employment;
- all records an employer is required to keep pursuant to Part 3 of the *Employment Standards Act* and Part 8, Section 46 and 47 of the *Employment Standards Act Regulation*;

- all cancelled cheques, bank statements, and daily logs.

The documents were to be delivered by 11:00 a.m. on Tuesday, November 14, 2000, at the address provided.

According to the information outlined in the Determination, by letter dated October 20, 2000, Gidda responded with concerns about delivery of the payroll records. On November 9, 2000, Erwin Schultz replied to Gidda's letter. Schultz referred to some documents that had been sent by "collect" courier and advised that the Branch would not accept collect deliveries. Schultz suggested, if Gidda was unable to deliver the records, that Schultz might be able to arrange to pick them up, during normal working hours. Schultz advised that failure to comply could result in a penalty of \$500.00 for each contravention.

On November 30, 2000, the Branch received payroll records which were reviewed by employment Standards Officer Sukhdip Klair. The records consisted of photocopies of the face of some cheques and two pages of payroll summary for June 18 to September 23, 2000. The records were incomplete and no originals had been provided.

On December 20, Klair sent a letter giving Gidda a further opportunity to provide the required documents.

In the January 19, 2001 Determination, the Director states that Gidda did not provide additional records and did not contact the Branch.

The appeal is dated February 6, 2001. The Director sent a submission dated February 21; Gidda's reply is dated February 23; the Tribunal gave all interested parties the opportunity for final reply by March 22; the Director made a further submission dated March 20.

## **ARGUMENT**

In the appeal document, Gidda stated that the Branch is unconstitutional, has violated Gidda's rights and freedoms under the Charter, has shared information with other departments, and has bullied and abused Gidda. Gidda alleges the Branch violated property rights. I presume this relates to the June 23, 2000 inspection.

In the submission of February 6, Kal Gidda is reported to have said that the records had been sent and the Branch refused to receive them. Kal Gidda reportedly attempted to contact Klair and Schultz, many times but neither was available.

Gidda submitted the company policy is to make the records available if the branch has the authority to demand them but Gidda will not incur any expense.

Gidda contends that they have done nothing wrong and request that the Determination be cancelled.

The Director submitted the case is straightforward: the employer was served with a Demand for Employer Records and failed to produce the records. The records submitted did not include information on daily hours of work, rates of pay, overtime, vacation pay, or statutory holiday pay. The employee information required was not provided. This employer has been through the Farm Labour Contractor License program and is aware of the requirement to keep payroll records.

The Director denied that there was any record of attempted contacts by Gidda to Klair or Schultz. After receiving the October 20 letter, Klair attempted unsuccessfully to contact Kaldep Gidda by telephone.

In response to Gidda's suggestion that records had been refused by the Branch, the Director submitted that a Demand for Records had been made in July 2000, to a separate company. One of the Directors of Gidda is also a Director of that company. In response to the Demand, the employer sent 75 parcels by collect courier to the Branch. The Branch opened one parcel, found it contained a photocopy of the face of one cheque. The Branch refused delivery of the remainder of the parcels. The courier cost for each package was \$12.23, for a total of \$917.25.

## **FINDINGS**

Although Gidda has raised many challenges to the Director's actions, including a statement that the required records were delivered and refused, Gidda has not provided any direct evidence to support the challenges and allegations. Gidda has not indicated the date on which the records were supposedly delivered and refused. Gidda has not denied the Director's statement of what was contained in the records delivered November 30, 2000.

I do not accept Gidda's contention that records were delivered and refused. It may be that Gidda was confused about the Demands made on the two companies.

I find that Schultz, on behalf of the Director, attempted to accommodate Gidda by suggesting that the documents could be picked up. This would have alleviated the expense factor.

I find nothing in the submissions to support the contentions that the Director acted improperly.

I find that the Director made a Demand for Employer Records. The Demand identified the records required and the time and place for delivery. Gidda did not comply with the Demand. Consequently, I find that Gidda contravened section 46 of the *Employment Standards Act*.

I find that the Director has the discretion under Section 98 of the *Act* to impose a penalty. There is nothing in the submissions to support a contention that the Director exercised the discretion improperly. Section 28(a) of the *Regulation* sets the penalty at \$500.00 for this contravention.

I find that Gidda must pay the assessed penalty of \$500.00

**ORDER**

Pursuant to section 115 of the *Act*, I confirm the Determination issued January 19, 2001.

**M. GWENDOLYNNE TAYLOR**

**M. Gwendolynne Taylor**  
**Adjudicator**  
**Employment Standards Tribunal**