

An appeal

- by -

Buttar Farms Ltd.
("Buttar")

- 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.: 2001/169

DATE OF DECISION: May 23, 2001

DECISION

SUBMISSIONS:

- S. Buttar on behalf of Buttar Farms Ltd. (“Buttar”)
- J. V. Walton on behalf of the Director of Employment Standards (the “Director”)

OVERVIEW

Pursuant to section 112 of the *Employment Standards Act* (“Act”), Buttar filed an appeal from a Determination by the Director dated February 19, 2001. The Director found that Buttar had exceeded, by two, the number of employees permitted by the Farm Labour Contractor License (FLCL). The Director found that this was a contravention of section 13(1) of the *Act*. The Director imposed a penalty of \$500.00 calculated under section 29(2)(c) because Buttar had two previous Determinations for similar contraventions.

On February 26, 2001, Buttar appealed the Determination requesting that the Tribunal cancel the Determination due to mistake and financial hardship.

ISSUE

1. Did Buttar contravene section 13(1) of the *Employment Standards Act*?
2. Does Buttar have to pay a penalty of \$500.00 pursuant to section 98(1) of the *Act* and section 29(2)(c) of the *Employment Standards Regulation* (“Regulation”)?

THE FACTS

Buttar Farms Ltd. has been in operation since February 19, 1993, date of incorporation. According to the Director’s uncontradicted evidence, S. Buttar is a past president of the Farm Labour Contractor Association.

On May 13, 1999 and August 29, 2000, the Director issued Determinations against Buttar for contraventions of section 13(1). On August 29, 2000, the Director issued a Farm Labour Contractor License (FLCL) for the year 2000, permitting Buttar to employ a maximum of 6 people.

On September 13, 2000, Buttar supplied 6 workers to Xenios Dutch Grower Ltd and 2 workers to Albion Nursery Ltd.

ARGUMENT

Buttar acknowledged that it exceeded the licensed number of employees but says that it was done either without S. Buttar's knowledge or by mistake and noted that the requests for farm contractors are not on a regular basis. I take from this statement that Buttar cannot rely on regular work and there would have been days when Buttar did not have any employees working.

Buttar has already paid \$1,200 in the year 2000.

The Director submitted that Buttar had not appealed the contravention determination, only the fine.

FINDINGS

The Appellant bears the onus of proving that the Director's determination was incorrect. I accept that the Appellant was intending to question both the finding of the contravention and the penalty. On the former, I noted the Appellant suggested that he was not aware, or had made a mistake. I find neither of those explanations sufficient evidence or legal argument to disprove the contravention.

Section 6(4) of the *Regulation* requires the FLC to maintain a daily log that includes the names of the workers. If this was being done, Buttar would have known the number of employees. I find this argument is not credible. Consequently, I deny this aspect of the appeal.

Regulation section 5 sets out the procedure for applying for a FLCL and authorizes the Director to include in a licence any term the Director considers appropriate for the purposes of the *Act*. Section 13(1) of the *Act* prohibits a person from acting as a Farm Labour Contractor unless licensed under the *Act*.

Section 98 of the *Act* permits the Director to impose a penalty, in accordance with the prescribed schedule, if the Director is satisfied that the person has contravened the *Act* or the *Regulation*. Section 28 of the *Regulation* establishes a penalty of \$500 for each contravention of section 13. Section 29(2) of the *Regulation* also establishes a penalty for a contravention of section 13 if the contravention is found to be "no acting as a farm labour contractor without a licence", as set out in Appendix 2, Specified Provisions for Penalty Purposes.

The Director issued a penalty under section 29(2)(c) of the *Regulation*. It seems to me that it was open to the Director to have determined that Buttar contravened a term or condition of the FLCL and assessed the penalty under section 28. On this occasion, the penalties would be the same.

The other option open to the Director was to cancel the licence, pursuant to section 7 of the *Regulation*. The licence was for 2000 year and the Determination was issued in February 2001. Hence, cancellation was not an adequate penalty.

I find that the Director had 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 29(2)(c) of the *Regulation* sets the penalty at \$250.00 per employee affected. The facts are clear that Buttar exceed the licence terms by two employees.

I find that Buttar must pay the \$500.00 penalty.

ORDER

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

M. Gwendolynne Taylor
Adjudicator
Employment Standards Tribunal