

An appeal

- by -

PPG Labour Supply Ltd.
("PPG")

- 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: John M. Orr

FILE No.: 2003A/245

DATE OF DECISION: November 5, 2003

DECISION

SUBMISSIONS

Rajpal K Sandu	on behalf of PPG Labour Supply Ltd
Sharn Kaila	on behalf of the Director

OVERVIEW

This is an appeal by PPG Labour Supply Ltd. (“PPG”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”), of a Determination of the Director of Employment Standards (the “Director”) issued on July 31, 2003, which imposed a \$500.00 penalty. The Determination concluded that the PPG had contravened 13(1) of the *Employment Standards Act* operating as a farm labour contractor without being licensed under the Act.

FACTS AND ANALYSIS

PPG takes issue with the Determination claiming that the Director’s delegate erred in finding that it was the employer of certain farm labourers. Rather PPG claims that it simply leased farms and that another company BSA Enterprises actually employed the labourers. As the appellant, PPG has the burden to persuade me that the Determination is wrong. In my opinion, it has failed to meet that burden and the appeal is dismissed.

In *Narang Farms and Processors Ltd.*, BCEST #D482/98, the penalty process is summarized as follows:

“... the penalty determinations involve a three-step process. First, the Director must be satisfied that a person has contravened the Act or the Regulation. Second, if that is the case, it is then necessary for the Director to exercise her discretion to determine whether a penalty is appropriate in the circumstances. Third, if the Director is of that view, the penalty must be determined in accordance with the Regulation.”

The material facts of this appeal are relatively straight forward.

On July 11, 2003 an Agriculture Compliance team conducted a site visit at a blueberry farm in Abbotsford. The farm was not owned by PPG but the compliance team found 14 employees on site who said that they were employed by PPG. Manjit Sandhu who is a principal of PPG was also present at the site. There was also a farm vehicle at the site. The vehicle was and is registered in the name of PPG.

On the other hand PPG has asserted that it was no longer in the business of farm labour supply but simply leased the farm to other farm labour suppliers. The Director’s delegate investigated these claims but found that there was little evidence to support the claims made by PPG in contrast to the direct personal evidence given by the farm labourers.

In the appeal PPG maintains the same arguments made to the Director but purports to supply some new evidence to support its position. However there is nothing in this new evidence that clearly supports the claim by PPG that it was not in the farm labour supply business on July 11, 2003. PPG claims that the

vehicle was sold at some stage but a recent motor vehicle search by the Director indicates otherwise. Although letters were supplied indicating some support for the allegations made by PPG none are specific as to dates and go no further than general assertions.

In the circumstances, I am of the view that PPG has not met the onus of establishing that the Director erred in law or in fact and accordingly the penalty was proper.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter, dated July 31, 2003 is confirmed.

John M. Orr
Adjudicator
Employment Standards Tribunal