

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act* S.B.C. 1995, C. 38

- by -

SGS Farm Contractors Ltd.  
("SGS")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Norma Edelman

**FILE NO.:** 96/487 & 96/510

**DATE OF HEARING:** October 17, 1996

**DATE OF DECISION:** November 6, 1996

## DECISION

### OVERVIEW

This is an appeal by SGS Farm Contractors Ltd. (“SGS”) under Section 112 of the *Employment Standards Act* (the “*Act*”) against Determination Nos. CDET 003653 & 003659 which were issued by delegates of the Director of Employment Standards on, respectively, August 9, 1996 and August 13, 1996. Determination No. CDET 003653 cancelled SGS’s farm labour contractor license. Determination No. CDET 003659 found that SGS owed wages to the following individuals: Bachittar S. Dhaliwal (“B. Dhaliwal”), Gurdev K. Mattu (“G. Mattu”), Mohan S. Mattu (“M. Mattu”), Surinder K. Samra (“Samra”) and Jaswinder K. Sohal (“Sohal”). SGS appealed Determination No. CDET 003653 on August 15, 1996 and Determination No. CDET 003659 on August 27, 1996. It argues that its license should not have been cancelled and that it does not owe wages to the above-named individuals.

A hearing was held on October 17, 1996 at which time evidence was given under oath. Clayton Campbell (“Campbell”), appeared as counsel for SGS. With him was Amrik S. Dhaliwal (“A. Dhaliwal”), the principal of SGS, and Dalip Singh Mann (“D. Mann”), Rashpal Singh Sahota (“Sahota”), Gurdev Singh Nahah (“Nahah”), and Gian Kaur (“Kaur”). B. Dhaliwal, G. & M. Mattu, Samra and Sohal also appeared at the hearing. Lynne Egan and Kevin Rooney (“Rooney”) represented the Director of Employment Standards. Birpal S. Mann (“B. Mann”), an accredited Punjabi Interpreter and Translator, interpreted the evidence at the hearing.

### ISSUES TO BE DECIDED

The issues to be decided in this appeal are whether SGS should have had its farm labour contractor license cancelled and whether SGS owes wages to five former employees.

### FACTS AND ARGUMENTS

In 1995 and 1996, the Employment Standards Branch issued SGS a license to act as a farm labour contractor. Licenses are issued on a yearly basis and expire on December 31 of the year in which they are issued by the Branch.

During the 1995 season, SGS employed 45 to 50 farm workers, including B. Dhaliwal, G. & M. Mattu, Samra and Sohal.

A Dhaliwal testified that during the 1995 season he paid his farm workers \$1,500.00 per month. The wages were paid in cash and by cheques. A Dhaliwal stated that he paid cash to employees upon their request and to meet their needs (e.g. when the employee needed money urgently to pay for rent or to buy groceries). Once a month he paid the balance

owing to each employee by way of a cheque. A. Dhaliwal stated that he did not make a practice of having someone present when he paid cash. He said different people were present at different times. He often paid the cash in the fields and since workers were about 4 to 5 feet away from each other, they probably saw the transactions.

D. Mann, Sahota, Nahah and Kaur, who worked for SGS during the 1995 and 1996 seasons, gave evidence that they, like all employees, were paid in cash when they needed it, and A. Dhaliwal paid them the balance owing by way of cheque at the end of the month. None of these witnesses, however, were able to indicate how much they received in the form of cash versus a cheque each month. Indeed, Sahota, Nahah and Kaur were not certain how much money they received in total each month.

A. Dhaliwal further testified that after he paid cash to an employee, he would make a note immediately in his personal diary (which he did not bring to the hearing) of the amount and the name of the employee receiving the cash. The employee was not asked to sign a receipt. Later, when he got home, he would prepare a receipt and write the signature of the employee on the receipt. If he had made more than one cash payment to an employee, the receipt would indicate the total amount paid. Then, he would give a copy of the receipt to the employee. SGS's other witness, however, did not confirm this practice.

D. Mann, Sahota, Nahah and Kaur testified that they never signed or received any receipts for cash.

A. Dhaliwal stated that, like all his employees, B. Dhaliwal, G. & M. Mattu, Samra and Sohal were paid by cheque and cash, and have all been paid in full. There is no dispute that B. Dhaliwal, G. & M. Mattu, Samra and Sohal received various cheques from A. Dhaliwal. The cheques indicate that when they were paid, it was often on a monthly basis, and the amount paid was not necessarily reflective of actual earnings in that period. It should also be noted that certain of these cheques have failed to clear the bank and are the subject of another Determination which was issued on September 13, 1996. What is in dispute in this appeal, and forms the basis of Determination No. CDET 003659, is whether A. Dhaliwal made cash payments to B. Dhaliwal, G. & M. Mattu, Samra and Sohal.

A. Dhaliwal provided eight receipts for cash payments which he said were made to B. Dhaliwal, G. & M. Mattu, Samra and Sohal.

Two receipts dated August 15, 1995 and December 17, 1995 indicate B. Dhaliwal received from SGS respectively \$1,000.00 and \$454.99. A. Dhaliwal stated that he paid the \$1,000.00 "little by little" on "2 to 3 different occasions" in the fields. By August 15, 1995, he had paid the full \$1,000.00. He was not able to give a breakdown of exactly when each payment was made and how much was paid each time. Regarding the payment of \$454.99, A. Dhaliwal stated he paid this money to B. Dhaliwal in front of D. Mann. This was not, however, confirmed by D. Mann. Rather, D. Mann testified that he saw B. Dhaliwal give \$20.00 to A. Dhaliwal sometime prior to November, 1995.

One receipt dated August 15, 1995 indicates G. Mattu received \$254.99 from SGS. Another receipt dated September 25, 1995 indicates M. Mattu received \$966.99 from SGS. A Dhaliwal stated that these monies were paid for liquor purchases for M. Mattu. The latter

amount was paid on 1 to 3 different occasions in the fields, or in front of a liquor store. He was not able to give a breakdown of exactly when the payments took place and how much was paid on each occasion. Sahota gave evidence that he saw A. Dhaliwal give cash to G. and M. Mattu on 2 to 3 occasions prior to September, 1995. This occurred in the fields. He doesn't know the exact amount of cash that was involved in the transactions.

Two receipts dated October 10, 1995 and December 15, 1995 indicate Samra received respectively \$2,000.00 and \$1,101.90 from SGS. A. Dhaliwal stated that Samra told him to give the first amount to her husband as he needed the money to go to India.

A. Dhaliwal said he gave the money to Samra's husband and he made the receipt out to Samra. He paid the other amount, in one lump sum, to Samra either at his or her house. Nahah testified that he saw Samra ask A. Dhaliwal for money, but he never saw

A. Dhaliwal give her any money. Kaur testified that she saw A. Dhaliwal give cash to Samra (\$100.00 bills) at his home, but she doesn't know the exact amount or when this took place, but it was before the end of the berry season.

Two receipts dated August 20, 1995 and December 16, 1995 indicate Sohal received respectively \$1662.19 and \$93.00 from SGS. A. Dhaliwal stated that he paid the first amount "little by little", "\$200.00, \$400.00 whatever, depending on the circumstances". Again, he could not provide a precise breakdown of the amounts or time of the payments. Both amounts of money were paid in the fields.

All the receipts bear signatures (except for the B. Dhaliwal receipt of December 17, 1995) and these signatures resemble the signatures of the five individuals. There is no dispute that A. Dhaliwal prepared these receipts, including writing the signatures of the five individuals. A. Dhaliwal stated that he wrote the signatures in the style he did and not in his own style because: "This I wrote for my own memory", "I did not copy the signatures", "I don't have anybody's signatures, I just wrote down from my own memory" and "I don't know how they sign". A. Dhaliwal testified that he prepared these documents as a personal record of cash payments made to the individuals and he gave a copy of each receipt to the individual in question.

B. Dhaliwal, G. & M. Mattu, Samra and Sohal claim they did not receive any cash from A. Dhaliwal and they did not sign or receive any receipts for the alleged cash payments. They do not know if A. Dhaliwal paid cash to anyone. The Mattus said they do not know Sahota and they deny his allegation that they received cash from A. Dhaliwal. In reply to D. Mann's claim, B Dhaliwal stated "Why would I give \$20.00 to A. Dhaliwal when he owes me money". Samra denied the claims of Nahah and Kaur regarding cash payments.

Campbell argues that Determination CDET 003659 should be set aside. He states that his client is an inexperienced contractor who had some unwise practices regarding the payment of wages to his employees. He made cash payments without getting receipts signed by his employees, and he made payments that were not necessarily on the proper pay days, but this was done to accommodate the short term economic needs of his employees. This was confirmed by all of SGS's witnesses, who Campbell submits, are all

credible and their evidence should be accepted in full. Furthermore, his client's evidence that he paid cash to the five individuals involved in this appeal, was supported by the evidence of 2 of SGS's other witnesses who stated that they saw cash payments made to three of the five individuals.

Rooney argues that Determination No. CDET 003659 should be upheld as SGS has not shown that the individuals named in the Determination have been paid in full.

A. Dhaliwal has acknowledged that the receipts were not contemporaneous with the alleged payments to the individuals. His witnesses were unable to identify payments in terms of exact amounts and times when cash was allegedly paid to B. Dhaliwal, G. & M. Mattu, Samra and Sohal. Some of SGS's witnesses were unable to identify the amounts they were paid, and A. Dhaliwal's evidence that he gave receipts to employees was contradicted by his own witnesses. Given the foregoing, Rooney asserts that A. Dhaliwal and SGS's other witnesses are not credible.

At issue in this appeal, as well, is whether SGS's farm labour contractor license should have been cancelled as per Determination No. CDET 003653. Rooney stated that the license should be cancelled for the following reasons: 1) The Tribunal upheld a Determination issued against SGS for non-payment of wages on June 12, 1996 and in that decision the Adjudicator noted that SGS failed to keep accurate records of hours of work; 2) Determination No. CDET 003659 was issued against SGS for non-payment of wages to B. Dhaliwal, G. & M. Mattu, Samra and Sohal; 3) A. Dhaliwal initially represented the signatures on the receipts as being written by the employees named on the receipts; 4) A. Dhaliwal has acknowledged that the receipts were not contemporaneous with actual payments of cash to the individuals; and 5) A. Dhaliwal has acknowledged he does not pay wages in accordance with the *Act*. Specifically he only pays once a month and not semi-monthly.

Campbell argues that his client did not represent at the hearing that the signatures on the receipts were the actual signatures of the employees. Campbell states that if the Tribunal finds that SGS paid the five individuals in full, albeit perhaps not in the correct time frame, then the cancellation of the license is too harsh. Rooney disagrees. He argues that central to the decision to cancel the license was SGS's failure to pay its employees in a timely fashion and SGS's failure to keep proper records as required by the *Act*.

**ANALYSIS**

I am not satisfied that the amounts of cash identified in the eight receipts were paid to B. Dhaliwal, G. & M. Mattu, Samra and Sohal. Although A. Dhaliwal may have given cash to employees, there is insufficient evidence to establish that he paid B. Dhaliwal, G. & M. Mattu, Samra and Sohal the amounts listed in the receipts. First, B. Dhaliwal, G. & M. Mattu, Samra and Sohal deny they received the cash. Second, there are no documents which indicate that these five individuals received the cash. They did not sign any documents which would show they received cash and there is no evidence to support A. Dhaliwal's claim that he gave a copy of his receipts to these individuals. Third, in certain instances, A. Dhaliwal was not able to give the exact amounts of cash allegedly paid out and the timing of the payments. Fourth, Sahota's evidence does not establish that the Mattus received a total of \$1,221.98 from A. Dhaliwal or that any amount of cash that may have been received by the Mattus were payments for wages that they earned in the 1995 season. Fifth, the evidence of Nahah and Kaur does not establish that Samra received a total of \$3,101.90 from A. Dhaliwal or that any amount of cash that may have been received by her was payment for wages that she earned as a farmworker in the 1995 season.

The onus is on the employer to show that it has paid its employees all earned wages. SGS has not met this burden of proof and has not persuaded me to cancel Determination No. CDET 003659.

SGS's farm labour contractor license was cancelled pursuant to Section 7 (c) of the Employment Standards Regulation which states that the Director of Employment Standards may cancel a farm labour contractor's license if the farm labour contractor contravenes the *Act* or the Regulation.

There is no dispute that SGS has contravened the *Act*. The Tribunal rendered a decision in June of 1996 that SGS failed to pay wages to a farm worker. In this appeal, it is my finding that SGS has failed to pay wages to 5 more farm workers. A. Dhaliwal has conceded that he does not pay his employees on at least a semi-monthly basis as is required by Section 17 of the *Act*. Furthermore, Sections 27 and 28 of the *Act* state that an employer must keep records of the amounts earned and paid to each employee in each pay period and provide statements of these amounts to the employee. There was no evidence presented at this hearing which would indicate SGS has complied with Sections 27 and 28 of the *Act*. Given the foregoing, I can find no reason for setting aside the decision of the Director to cancel SGS's license as outlined in Determination No. CDET 003653.

**ORDER**

I order, pursuant to Section 115 of the *Act*, that Determination Nos. CDET 003653 & 003659 be confirmed.

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**Norma Edelman**  
**Registrar**  
**Employment Standards Tribunal**