

**EMPLOYMENT STANDARDS TRIBUNAL**  
In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act R.S.B.C. 1996, C. 113*

- by -

Sukhanand Enterprises Ltd.

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 98/504

**DATE OF DECISION:** October 8, 1998

## DECISION

### OVERVIEW

This is an appeal by Sukhanand Enterprises Ltd. (“Sukhanand”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination which was issued on July 24, 1998 by a delegate of the Director of Employment Standards. In the Determination, Sukhanand is found to have contravened Section 6(1) of the *Employment Standards Regulation* (BC Reg 396/95) by failing to notify the Director of a change in its address. Sukhanand is licensed as a Farm Labour Contractor under Part 2 of the *Regulation*. The Director’s delegate imposed a penalty of \$NIL in accordance with the prescribed schedule of penalties under Section 29(2) of the *Regulation* and Appendix 2 to the *Regulation*.

Sukhanand’s principal ground of appeal is that it should not be penalized for “a little technicality” in the *Act*.

This appeal proceeded by way of written submissions.

### ISSUE TO BE DECIDED

Did the Director’s delegate err in determining that Sukhanand had contravened Section 6(1) of the *Regulation* and, as a result, imposing a \$NIL penalty?

### FACTS

Sukhanand was licensed by the Director as a Farm Labour Contractor on June 29, 1998 upon meeting the requirements in Section 5 of the *Regulation*, including payment (by cheque) of the required fee (\$150.00). Sukhanand’s cheque was returned on July 13, 1998 by the financial institution because there were not sufficient funds in the account on which it was drawn.

On receipt of that information, a delegate of the Director conducted inquiries and attempted to contact Sukhanand by telephone so as to receive full payment of the application fee. The Director’s delegate was unable to contact Sukhanand by telephone. Mail which was sent to Sukhanand’s address was returned by Canada Post as undeliverable. On July 22, 1998 the Director’s delegate went to Balbinder Sidhu’s residential address (Balbinder Sidhu is the “owner” of Sukhanand), was informed that he had moved “2 to 3 weeks ago” and that his new address was unknown. Mr. Sidhu acknowledges that his residential address changed on July 15, 1998. The Director’s delegate requested that Mr. Sidhu contact her immediately. He did so on July 24, 1998 and paid the license fee in full by cash. The determination which is under appeal was issued on July 24, 1998.

**ANALYSIS**

Section 13(1) of the *Act* requires that “...a person must not act as a farm labour contractor unless the person is licensed under this *Act*.” The process by which a person becomes licensed as a farm labour contractor is set out in Section 5 of the *Employment Standards Regulation* (B.C. Reg. 396/95),

*Licensing of farm labour contractors*

5. (1) *An application for a licence to act as a farm labour contractor must*
  - (a) *be made to the director, and*
  - (b) *be accompanied by a fee of \$150.*
  
- (2) *The director may issue a licence only if the applicant has*
  - (a) *completed a written application in a form required by the director,*
  - (b) *paid the licence fee,*
  - (c) *satisfied the director by an oral or written examination, or both, of the applicant's knowledge of the Act and this regulation, and*
  - (d) *posted security in accordance with subsection (3).*
  
- (3) *The security must*
  - (a) *be posted under the Bonding Act,*
  - (b) *be of a type that is listed in section 8 of the Bonding Regulations and is acceptable to the director, and*
  - (c) *equal the amount obtained by multiplying the minimum hourly wage by 120 hours and multiplying the result by the number of employees specified in the licence.*
  
- (4) *The director may include in a licence issued to a farm labour contractor any condition the director considers appropriate for the purposes of the Act.*
  
- (5) *The director may refuse to issue a licence to an applicant who has had a previous licence cancelled.*

The statutory duties of a farm labour contractor are set out in Section 6 of the *Regulation* and include a requirement (Section 6(1)(c)) to "...immediately notify the Director of a change in the farm labour contractor's business or residential address."

Under Section 98 of the *Act*, the Director may impose a penalty for each contravention of the *Act* or *Regulation* "...in accordance with the prescribed schedule of penalties"(sic). The proscribed penalties are contained in Section 29 and Appendix 2 of the *Regulation*. Section 29(2)(a) of the *Regulation* establishes a \$NIL penalty if the person who contravened the specified provision had not done so previously.

Mr. Sidhu acknowledges that the residential address (given by him in his application for a licence on June 29, 1998) changed on July 15, 1998. He also acknowledges that he did not inform the Director of that fact until July 23, 1998 because he was "... staying at (his) cousin's house" and "... did not feel comfortable having (his) business mail sent to ..." that address. Mail sent by the Director to Sukhanand's business address was returned as undeliverable by Canada Post.

It is not necessary for me to decide whether the failure of a person to comply with the licensing provisions of the *Act* and *Regulation* are "absolute liability offences" rather than "strict liability offences" because, even if a defence of "due diligence" were available to Sukhanand, I find that there is no evidence to establish that any action was taken by it to **immediately** notify the Director of the change in the farm labour contractor's business or residential address as required by Section 6(1)(c) of the *Regulation*.

**ORDER**

I order, under Section 115 of the *Act*, that the Determination dated July 24, 1998 be confirmed.

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**