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 -

O K Labour Co. Ltd.

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: John M. Orr

FILE No.: 2000/284

DATE OF DECISION: August 18, 2000

DECISION

OVERVIEW

This is an appeal by O K Labour Co. Ltd.("OK") pursuant to Section 112 of the *Employment Standards Act* (the "*Act*") from a penalty Determination numbered ER# 97639 dated April 4, 2000 by the Director of Employment Standards (the "Director").

In the Fall of 1999 the Director had issued a $0.00 penalty determination against OK for failing to have a farm labour contractor's licence. On a site visit on March 15, 2000 delegates of the Director found that OK was again operating without a licence when three of their employees were working at Sunrise Vineyards Ltd ("Sunrise"). A second penalty determination was issued in the amount of $450.00.

OK appeals from the second penalty determination.

ANALYSIS

The appeal filed by OK indicates that the basis of their appeal is that the three employees were indeed working for OK but stresses that they were not working at the vineyard owned by Sunrise. OK submits that the employees were "pruning the grape plants so that they can get the wood for propagation plant".

As OK admits that the three workers were indeed their employees the only issue is whether OK is a "farm labour contractor". OK concedes that, at the time, they did not have a farm labour contractor's licence.

"Farm labour contractor" is defined in section 1(1) of the *Act* as follows:

> ***"farm labour contractor"*** *means an employer whose employees work, for or under the control or direction of another person, in connection with the planting, cultivating or harvesting of an agricultural product;*

OK says that their workers were "pruning" the grape vines. However the submission is not clear whether they are submitting that "pruning" is not "work...in connection with...cultivating or harvesting". It seems to me that without any further submission on this point that "pruning" would have to be considered, in its plain meaning, to be part of the cultivation of the product.

Thus, OK was an employer. OK's employees worked in connection with the cultivation of an agricultural product. Therefore, by definition, OK was a "farm labour contractor". They did not have a licence.

The onus at an appeal of a determination is on the appellant to satisfy the Tribunal that the determination is wrong. I am not satisfied that OK has persuaded me that the Determination in this case is wrong.

ORDER

I order, under section 115 of the *Act,* that the Determination is confirmed.

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John M. Orr
Adjudicator
Employment Standards Tribunal