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-

Punjab Labour Supply Ltd.
(the "employer")

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

ADJUDICATOR:	Kenneth Wm. Thornicroft
FILE No.:	98/441
DATE OF DECISION:	September 3, 1998

DECISION

OVERVIEW

This is an appeal brought by Punjab Labour Supply Ltd. (the "employer") pursuant to section 112 of the *Employment Standards Act* (the *"Act"*) from a Determination issued by a delegate of the Director of Employment Standards (the "Director") on June 18th, 1998 under file number 083029 (the "Determination").

By way of the Determination, the Director's delegate issued a $NIL penalty against the employer, a farm labour contractor. The penalty was issued because the employer, on June 16th, 1998, used an unregistered bus to transport employees to a strawberry farm situated in Chilliwack, B.C. This latter action was a contravention of section 6(1) of the *Employment Standards Regulation;* a $NIL penalty was imposed pursuant to section 29(2)(a) of the *Regulation.* As noted in the Determination, a subsequent penalty of a "specified provision" as defined in section 29(1) of the *Regulation* would be assessed at $150 per affected employee.

The delegate also issued a determination on June 18th, 1998 under the same file number. By way of this latter determination the delegate issued a $NIL penalty under section 13(1) of the *Act*--employing more persons than permitted by the farm labour contractor's licence. The employer admits this contravention ("my driver..picked up an extra employee in the morning") and, in any event, an appeal of this latter determination has never been properly filed with the Tribunal. Even if it could be said that an appeal of the June 18th determination has been properly filed, I would nonetheless dismiss that appeal under section 114(1)(c) of the *Act.*

ISSUE TO BE DECIDED

In a letter dated July 9th, 1998 and appended to its appeal form, Amrit Tung, on behalf of the employer, admitted that on the day in question the employer was transporting employees in a bus that did not have a licence on board--see section 6(1)(a) and (b) of the *Regulation.* The only defence advanced by the employer is: "We do not have any intention to break the regulation".

ANALYSIS

The employer admits operating a bus on June 16th, 1998 that did not have a licence on board as required by the Regulation. Further, the Determination states that the bus in question, licence plate number 7949 CG, was *never* properly licensed as a transportation vehicle. The delegate has provided documentary evidence to support its position--the employer has provided *no evidence* to support its assertion that the bus was properly licensed but that, on June 16th, the licence was not on board the vehicle.

The various licensing penalties that may be levied against farm labour contractors do not require proof of intent, merely proof of the licensing contravention itself. In my view, there is no room for the "due diligence" defence--these are "absolute liability offences" not "strict liability offences". Even if the "due diligence" defence was available, there is no evidence before me upon which I could uphold that defence given the facts of this case.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued.

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Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal