

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 -

Jaspal's Workforce Ltd.
("Jaspal's")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: C. L. Roberts

FILE No.: 2000/564

DATE OF DECISION: October 3, 2000

DECISION

This is a decision based on written submissions by Jaspal S. Randhawa on behalf of Jaspal's Workforce Ltd., and J. V. Walton for the Director of Employment Standards.

OVERVIEW

This is an appeal by Jaspal's Workforce Ltd. ("Jaspal's"), pursuant to Section 112 of the *Employment Standards Act* ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued July 26, 2000. The Director found that Jaspal's contravened Section 6(4) of the *Employment Standards Regulation* in failing to provide a daily log for inspection, and Ordered that Jaspal's pay \$250.00 to the Director for the contravention, pursuant to Section 98 of the *Act* and 29 of the *Regulation*.

ISSUE TO BE DECIDED

Whether the Director erred in assessing a penalty for failing to provide a daily log without reasonable explanation.

FACTS

As set out by the Director's delegate, the facts are as follows.

On July 19, 2000, the Agriculture Compliance Team conducted a site visit at M & M Pacific Coast Farms at Colebrook Road, Surrey. Jaspal's had transported employees to this site to harvest blueberries. There was no vehicle or driver on site. Attempts to locate a Jaspal's representative were unsuccessful. The delegate determined that Jaspal's had contravened section 6(4).

Jaspal's has had two previous Determinations issued against it for contravening section 6(4) of the *Regulation*. The first was on July 28, 1998 for which it was assessed no penalty, the second on August 13, 1999, for which it was assessed \$150.00. Neither of those Determinations were appealed.

Because Jaspal's had two previous Determinations in respect of the same contravention, the Director's delegate determined a penalty of \$250.00.

ARGUMENT

Jaspal's says that on July 19, while transporting employees to the Colebrook Farm, one of the bus tires became flat. The driver telephoned the farmer to tell him he would be late because of the flat, and the farmer sent one of his own buses out to pick up the workers. The driver changed the flat tire and took the tire to be repaired. He was told the tire could not be fixed, and purchased a new one. Attached to the appeal documents is a copy of the receipt for the new tire purchase.

While the driver was at the tire repair shop, the inspection team appeared at the farm and were unable to locate the driver or vehicle.

Mr. Randhawa argues that the log sheet was in the bus at all times, and was presented to the owner of the farm as soon as the driver returned.

The Director's delegate states that on July 19, the Compliance Team followed a vehicle carrying farm workers with the licence plate number 6731DK, which is registered to Jaspal's, to M & M Pacific Coast Farms. The farm workers were observed being dropped off. When the team returned to the site minutes later, the vehicle had departed. Jaspal's employees were asked whether any of them had possession of the daily log. None indicated they had it, nor did any say where it could be located. The Compliance Team's log, which was included with the reply, notes that all of the workers were asked for the log, but none of them had it.

The delegate submits that it is a common practice of farm labour contractors to leave a copy of the daily log with an employee who is working at the site, or at the weigh-in scale should the supervisor or vehicle have to leave the work site.

The delegate argues that the penalty is appropriate in the circumstances.

ANALYSIS

Section 6(4) of the *Regulation* provides that a farm labour contractor must keep at the work site and make available for inspection to the director a daily log that includes

- a) the name of the employer and work site location to which workers are supplied, and
- b) the names of the workers who work on that site on that day.

Section 98 of the *Act* provides that if the director is satisfied that a person has contravened a requirement of the *Act* or the *Regulation*, the director may impose a penalty on the person in accordance with the prescribed schedule of penalties. Section 29 of the *Regulation* prescribes those penalties for contravention of section 6.

The *Act* places the burden of maintaining records and making them available for inspection on the employer.

The Director's evidence contradicts that of Jaspal's. Mr. Randhawa contends that the employees were not asked for the log sheet. The evidence of the delegate suggests that they were.

Mr. Randhawa also suggests that the owner of the farm was not asked for the log book. Whether the inspectors did or did not is irrelevant. First, there is no duty on the farm owner to keep a logbook. The duty rests with the contractor, and the inspectors are under no obligation to ask the owner of the farm to produce the log. In any event, such an inquiry would not have produced the logbook, as Mr. Randhawa claims that the log sheet was in the bus.

If Mr. Randhawa's submissions about the logbook being on the bus are truthful, there was, by his own admission, noncompliance with the *Regulation*.

What Mr. Randhawa suggests, as I understand it, is that Jaspal's had a reasonable excuse for not producing the daily log because the transportation vehicle suffered a flat tire and the farm owner drove the employees to the work site. The law does not provide for a reasonable excuse. However, even if it did, Jaspal's's submission conflicts with the evidence of the delegate that the investigation team saw the employees being dropped off at the farm site by a vehicle registered to Jaspal's.

The burden of proof rests with an appellant. I would expect that, had the farm owner indeed picked up the workers because Jaspal's driver experienced a flat tire, there would be some evidence from the owner corroborating this statement. Not only is there no independent corroboration from the owner, there is no evidence at all from Jaspal's employee, the driver of the vehicle. The only evidence in support the appeal is an invoice from a Richmond area Tire Distributor made out to Jaspal's Workforce Ltd. Attached to that invoice is a copy of a Visa slip which appears to have Mr. Randhawa's signature on it. This is the only evidence to the fact that Jaspal's purchased a tire on July 19. Mr. Randhawa has failed to provide me with a satisfactory explanation as to how an invoice from a Richmond area tire dealer supports his argument. On a balance of probabilities, I am not persuaded that Jaspal's had a reasonable excuse for failing to produce the daily log.

The appeal is dismissed.

ORDER

I Order, pursuant to Section 115 of the *Act*, that the Determination dated July 26, 2000 be confirmed in the amount of \$250.00, together with whatever further interest that may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

C. L. Roberts

C. L. Roberts
Adjudicator
Employment Standards Tribunal