

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 -

Ludhiana Contractors Ltd.
("Ludhiana" or the "Employer")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	Ib S. Petersen
FILE NO.:	1999/374 and 1999/375
HEARING DATE:	October 5, 1999
DECISION DATE:	October 19, 1999

DECISION

APPEARANCE

Ms. Kathryn J. Karst on behalf of Ludhiana

Ms. Shirley Kay on behalf of the Director

This is an appeal by Ludhiana pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against two Determinations of the Director of Employment Standards (the “Director”) issued on June 9, 1999. One Determination concluded that Ludhiana functioned as a farm labour contractor and that a number of employees, Jaspal K. Bains, Balwant Chahal, Sucha S. Sidhu, Gurdev K. Takhar and Jarnail S. Takhar (the “Employees”), were entitled to \$19,504.99 on account of wages, including statutory holiday pay and vacation pay. The other Determination was a “\$0.00” penalty for failure to have a farm labour contractor licence..

A hearing was held on October 5, 1999. At that time most of the Employees were present. Ludhiana’s counsel attended.

Prior to the hearing, by fax dated September 23, 1999, counsel for Ludhiana applied to the Tribunal for an adjournment of the hearing scheduled for October 5. She explained that the principal of the Employer, Mr. Sadhu Dhaliwal (“Dhaliwal”), would be out of the country, in India, attending his daughter’s wedding and would not return until “sometime in December” and requested the hearing be adjourned to a “convenient date early in the new year.” Counsel for the Director opposed the application.

On October 1, 1999, the Acting Chair of the Tribunal denied the application and ordered that the hearing proceed as scheduled.

At the hearing, counsel for Ludhiana again sought an adjournment. Despite the fact that the application had been denied by the Tribunal, I heard and considered her arguments as to why an adjournment should be granted in the circumstances. Counsel argued that it would be unfair to hear the matter in the absence of Dhaliwal and that the matter could be adjourned to a convenient date in January 2000. Counsel for Ludhiana stated that Dhaliwal left on September 22, 1999 and explained that the reason for the “open” ticket was--“in her experience”--that it was quite common not to be able to schedule return dates on flights from India. She argued that Ludhiana had not abandoned the appeal.

Counsel for the Director argued that Dhaliwal knew of the upcoming appeal and the wedding in India and had done nothing to inform the Tribunal or the Director until after leaving the country. His ticket was an “open” ticket and no return date had been provided. Similarly, Dhaliwal had provided no date for the wedding and reason why the matter could not be scheduled until January

2000. She suggested that Dhaliwal's absence was simply a ploy to avoid dealing with the process and pointed out that most of the Employees were present. If the matter was adjourned, some of the Employees might not be able to attend. Counsel for the Director also noted that others, including an officer of the Employment Standards Branch, present at the hearing, had been able to get "confirmed" flight dates to and from India and suggested that the explanation provided by the Employer was "implausible". She also argued that Dhaliwal's daughter had been involved in the operation and could have been present to testify with respect to the issues raised by the appeal. She argued that I should proceed with the hearing.

Leaving aside the issue of whether the decision of the Acting Chair of Tribunal to deny the application for an adjournment is a complete answer to the application, there is, in my view, no merit to the application for an adjournment. There is no dispute that the hearing notice, dated September 2, 1999, was received by the parties, including Dhaliwal. There is no suggestion that the hearing notice was not received in a timely manner and that Dhaliwal did not know that the hearing was scheduled for October 5. There is no dispute that Dhaliwal left the country on September 22. Counsel for Ludhiana did not explain why the Employer did not contact the Tribunal before leaving the country, or instructed its representative to do so, to schedule other hearing dates. Dhaliwal, the principal of the appellant Employer, through his actions, placed it in the position it was in. In my opinion, the burden to satisfy the Tribunal that an application--in this case, for an adjournment--should be granted rests with the applicant. Ludhiana has failed to meet that burden.

Counsel for Ludhiana argued that Dhaliwal should be given the opportunity to appear and provide the necessary explanation, i.e., the matter should be adjourned to allow him to do so. In my view, that is putting the cart before the horse. As mentioned, the burden to satisfy the Tribunal that the adjournment should be granted rests--in this case--with the appellant Employer. In these circumstances--the hearing was scheduled for October 5, proper notice given to the parties on September 2, and Dhaliwal left the country on September 22--the Employer had ample time to make an application for an adjournment supported by the necessary evidence.

Following my ruling on the adjournment application, Ludhiana's counsel stated that she could not proceed without her client present and made no further submissions.

In its appeal, Ludhiana stated that the delegate erred in finding that Records of Employment were issued by Ludhiana or by Ludhiana and Sandhu Farms Ltd.; that Dhaliwal acknowledged that he would prepare and present hours worked by his "former" employees to Sandhu Farms Ltd. for their payroll records and payment and that he did so; and that Ludhiana operated as a farm labour contractor and contravened the Act and Regulation. Ludhiana, the appellant in this matter, has the burden to prove the Determination wrong. I agree with counsel for the Director that there is nothing--in the nature of evidence or submissions--to support the argument that there is any error in the Determinations. In the result, as I stated at the hearing, in my view, the appellant Employer has failed to meet that burden and I dismiss the appeal.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determinations in this matter, dated June 9, 1999 be confirmed.

Ib Skov Petersen
Adjudicator
Employment Standards Tribunal