

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-

Gurdeep Enterprises Ltd.

(“Gurdeep” or the “employer”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 98/509

DATE OF DECISION: October 29, 1998

DECISION

OVERVIEW

This is an appeal brought by Gurdeep Enterprises Ltd. (“Gurdeep” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from two Determinations both issued by a delegate of the Director of Employment Standards (the “Director”) on July 28th, 1998 under file number 004489.

By way of one of the two determinations, the Director’s delegate levied a \$2,5550 (two thousand five hundred and fifty dollars) penalty; the other determination cancelled the employer’s farm labour contractor licence. I shall refer to the former determination as the “Penalty Determination” and to the latter as the “Cancellation Determination”.

On August 5th, 1998, Gurdeep’s solicitor faxed a note to the Tribunal advising, in part, that “The license in this matter has been re-issued so the only matter being pursued [sic] is the determination with respect to the fine”. Accordingly, inasmuch as the appellant has withdrawn its appeal of the Cancellation Determination, I shall only deal with the Penalty Determination.

ISSUES TO BE DECIDED

The employer’s solicitor advances five grounds of appeal, only four of which are relevant to the appeal of the Penalty Determination, namely:

- i) the Penalty Determination is “void for lack of particularization”;
- ii) the delegate who issued the Penalty Determination was not authorized to do so by reason of section 117(2) of the *Act*;
- iii) “the evidence obtained by the Director was by way of an ‘industry-wide’ audit and...this offends section 8 of the Canadian Charter of Rights and Freedoms”; and
- iv) “the appellant was not informed of his right to legal counsel and therefore any evidence obtained during the interview is not admissible since it is contrary to section 10 of the Canadian Charter of Rights and Freedoms”.

ANALYSIS

Although the Tribunal Registrar wrote to the appellant (and to its solicitor) on August 5th, 1998 requesting that it forward, by no later than 4:00 P.M. on August 26th, 1998, a written submission detailing the facts and relevant arguments relating to the appeal, as well as all supporting records

and documents, the appellant failed to do so. The only material filed by the appellant's solicitor is a statement setting out the grounds of appeal.

The third and fourth grounds, in an essentially identical form, were advanced by the same solicitor in an appeal filed by *Ludhiana Contractors Ltd.* (EST Decision No. 461/98, October 21st, 1998). I reject these two grounds for the same reasons I set out in that latter decision.

As for the second ground of appeal, while section 117(2) of the *Act* provides that "the Director may not delegate to the same person both the function of conducting investigations...and the power to impose penalties in relation to that [investigation]", the Penalty Determination, *on its face*, shows that the delegate who investigated the matters upon which the penalty was based was not the same officer who actually issued the Penalty Determination. This ground is clearly frivolous.

As for the first ground, it similarly is without any merit whatsoever. The employer has not explained how or why the Penalty Determination lacks particularity. Indeed, in my view, the Penalty Determination could not be particularized in any greater detail. A previous \$0 penalty is noted and the relevant previous determination was attached to the Penalty Determination. Thus, the Director was entitled to levy a \$150 per employee penalty for a subsequent contravention of a "specified provision" [see section 29(2) of the *Regulation*]. The subsequent contravention of a "specified provision", namely, the employer's failure to pay its employees at least semi-monthly [see section 17(1) of the *Act*] is fully particularized including the naming of all affected employees, 17 in total. Finally, the calculation of the penalty--\$150 per employee x 17 employees = \$2,550--is set out in the Penalty Determination [see section 29(2)(b) and Appendix 2, Part 3 of the *Regulation*]. What further information would have been necessary? I can think of nothing; nor has the appellant suggested what further information should have been set out in the Penalty Determination so that it would have been sufficiently particularized.

ORDER

Pursuant to section 115 of the *Act*, I order that the Penalty Determination be confirmed as issued in the amount of **\$2,550**.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal