

**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 -

Amrik S. Lidder operating as Bagicha Amrik Farm  
(the “appellant”)

- of a Determination issued by -

The Director of Employment Standards  
(the “Director”)

**ADJUDICATOR:** Sherry Mackoff

**FILE No.:** 98/566

**DATE OF DECISION:** November 6, 1998

## DECISION

### OVERVIEW

This is an appeal by Amrik S. Lidder operating as Bagicha Amrik Farm (the “appellant”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination, dated August 6, 1998, issued by a delegate of the Director of Employment Standards. The Determination found that the appellant had contravened section 6(1) of the *Employment Standards Regulation* (the “Regulation”). The Determination also imposed a \$0.00 penalty and notified the appellant that a further contravention will result in a penalty of \$150.00 per employee up to a maximum of \$500.00 per employee. As well, the Determination stated that “... under section 7 of the *Employment Standards Regulation* the Director may cancel or suspend a farm labour contractor’s licence, subject to the provisions of that section.”

Section 6(1) of the *Regulation* sets out certain duties of farm labour contractors. Section 6(1) is subdivided into subsections 6(1)(a) through 6(1)(f). These subsections particularize various duties. Subsections 6(1)(a) and (b) read as follows:

*6(1) A farm labour contractor must do all of the following:*

*(a) carry the farm labour contractor’s licence at all times while carrying on the licenced activities and display a copy of the licence prominently on all vehicles used for transporting employees;*

*(b) show the licence beforehand to all persons with whom the farm labour contractor intends to deal as a farm labour contractor;*

This appeal has proceeded by way of written submissions.

### FACTS

The appellant is licensed as a farm labour contractor. He wrote and passed the farm labour contractor examination on June 29, 1998. As set out in the delegate’s submission, before a licence can be issued it is necessary to ensure that the applicant is registered and in good standing with the Workers’ Compensation Board (“WCB”). According to the delegate’s submission the appellant was told that his WCB file needed attention and that his licence could not be issued until the matter was resolved. The “Farm Labour Contractor License” in the name of Amrik S. Lidder operating as Bagicha Amrik Farm is dated July 6, 1998.

On August 6, 1998 the appellant went to the Abbotsford office of the Employment Standards Branch and picked up the licence.

The opening paragraph of the Determination states the following:

On August 4, 1998, the Agriculture Compliance Team conducted a site visit to S & R Gill Farms located at 34941 Townshipline Road. At this site employees of Amrik S. Lidder operating as Bagicha Amrik Farm were found picking blueberries. Joginder K. Lidder a representative of this company was interviewed. She did not have a copy of the farm labour contractor licence at this site.

As stated above, the Determination found that the appellant had contravened section 6(1) of the *Regulation* and imposed a \$0.00 penalty.

## **ARGUMENTS**

The appellant's main arguments in support of the appeal, which are contained in two brief submissions, are as follows. First, that it was "impossible" for him to meet the requirement of section 6(1) because the licence was at the Employment Standards Branch until August 6, 1998. Second, that the appellant was not informed that he was not allowed to work until he had the farm labour contractor's licence in his possession. Third, that it was his understanding that as the licence was issued he could work. Fourth, that based on a discussion with the person who administers the licence application process in Abbotsford (the "licence administrator"), once the WCB registration was confirmed the licence would be mailed and he was authorized to work.

In his submission the delegate notes that the Abbotsford Employment Standards Branch representative who administers licence applications makes inquiries with WCB to ensure that the applicant is registered and in good standing. This inquiry revealed that the appellant's file with WCB needed attention and this was brought to the appellant's attention. The delegate goes on to state that as the appellant had met all the other requirements, the licence administrator prepared the licence and had the appellant sign it. However, the delegate states that the licence administrator explained that she could not issue the licence until the WCB confirmed that the appellant was registered and in good standing.

The delegate notes that on July 6, 1998, the Workers' Compensation Board advised the licence administrator that the appellant was properly registered, that she signed the licence and

to "... telephoned the appellant to advise them that their license was available to be picked up. ... (She) was not successful in reaching the appellant by phone as detailed in her notes ... She did however speak to a young man at the

appellants residence and warned them that they would be penalized should they be found working without their license. ...”

The delegate points out that “It is normal practice that farm labour contractors licenses are issued in person ... The licenses are not mailed to farm labour contractors.”

The delegate also submits that the farm labour contractor’s examination written by the appellant would indicate that he “... knew of the requirement to have a licence and the requirement to show his licence to all potential producers.”

He concludes his submission by stating that : “The appellant does not deny that he was not in possession of his license when inspected by the Agriculture Compliance Team on August 4, 1998. The appellant made no attempt to obtain his license prior to the August 4, 1998 inspection.”

## **ANALYSIS**

Section 6(1)(a) of the *Regulation* provides that a farm labour contractor must “*carry the farm labour contractor’s licence at all times while carrying on the licenced activities ...*”. In this appeal the appellant does not deny that a representative of the appellant did not have a copy of the farm labour contractor’s licence at a farm where employees of the appellant were working.

The appellant submits that it was “impossible” to meet the requirement of section 6(1) because the licence was at the Employment Standards Branch until August 6, 1998. In my view this argument provides no basis for a successful appeal. Section 6(1) of the *Regulation* makes it clear that a farm labour contractor must have possession of a licence in order to carry on licenced activities. The duty falls on the farm labour contractor to ensure that he is in compliance with this requirement.

The appellant submits that he was not informed by the “officer or clerk’ that he was not allowed to work until he had the licence in his possession. Again, this is not a successful ground of appeal. The duties of employers and of farm labour contractors are set out in the *Act* and the *Regulation* and there is no requirement to notify employers that they must comply with those statutory requirements.

The appellant also submits that his understanding was that the licence was issued and that he could work. I note that the appellant had written the farm labour contractor’s examination. However, even if the appellant did not know of the requirement to have possession of the licence ‘... *while carrying on the licenced activities ..*’ that lack of knowledge is irrelevant to whether a contravention took place. There is nothing in the wording of section 6(1) of the *Regulation* to indicate that a contravention must be made knowingly. Ignorance of a statutory requirement does not mean that the violation has not occurred.

The appellant also alleges that as per his discussion with the licence administrator that "... once she gets OK from worker's compensation board, (sic) she will mail ... licence and I was authorized to work."

For the purposes of the appellant's argument, I will assume, without deciding or making such a finding, that the appellant was told that once the licence administrator knew that the appellant was properly registered with the WCB that she would mail the licence and that he was authorized to work.

I note that the appellant does not specify the date this alleged discussion took place but from his submission it took place **prior** to confirmation being received from the WCB. The question then is when did the licence administrator receive information from the WCB that the appellant was in good standing?

In his submission the delegate states that on July 6, 1998 the WCB advised the licence administrator that the appellant was now properly registered. Although this is double hearsay, I note that there is a copy of the appellant's "Farm Labour Contractor License" with the delegate's submission and the licence is dated July 6, 1998.

I also note that in the appellant's first submission he states that he passed the farm labour contractor examination on "28th June, 1998." "Contractor licence was not issued because, I was not registered with the Worker's (sic) Compensation Board of B.C." The appellant states that his accountant told the licence administrator that the WCB number had been renewed and, according to the appellant's submission, she said "... I will confirm it tomorrow and mail the license." The appellant then states that the "License was issued on 6th July, 1998 ...". I conclude from this that the licence was "issued" on July 6th because the WCB had confirmed the appellant's good standing with the licence administrator.

Assuming, without deciding, that the appellant was notified on or before July 6, 1998 that the licence was being mailed, and that he could work, it is my view that it was unreasonable for the appellant to wait until August 6, 1998 before going to the Employment Standards Branch office to pick up the licence. The Employment Standards office is located in Abbotsford and the appellant is also located in Abbotsford. If within a week or two the appellant had not received his licence in the mail he should have made an effort to have found out what had happened. Section 6(1) of the *Regulation* imposes a duty on the appellant to have his farm labour contractor's licence in his possession "... while carrying on the licenced activities" and to show the licence "... to all persons with whom the farm labour contractor intends to deal as a farm labour contractor". If, as the appellant alleges, he was told the licence would be mailed (and as I previously stated I am not deciding this point or making such a finding) he should have followed up on the matter well before August 6th.

For the foregoing reasons I dismiss the appeal.

**ORDER**

I order, pursuant to Section 115 of the *Act*, that the Determination dated August 6, 1998 (File No. 85366) be confirmed.

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**Sherry Mackoff**  
**Adjudicator**  
**Employment Standards Tribunal**