

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of three appeals pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

- by -

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

- of Determinations issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Michelle Alman

**FILES Nos.:** 2000/673, 2000/674 and 2000/675

**DATE OF DECISION:** December 7, 2000

## DECISION

### OVERVIEW

This decision addresses appeals filed pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Jaspal’s Workforce Ltd. (“Jaspal’s”) from three Determinations issued September 22, 2000 by a delegate of the Director of Employment Standards (“the Director”). The first Determination concluded that Jaspal’s had contravened Section 28 of the *Act* in respect of the employment of nine employees by failing to list them on its payroll records. That Determination ordered Jaspal’s to cease contravening and to comply with the *Act*, and, pursuant to section 29 of the *Regulation*, ordered Jaspal’s to pay a penalty of \$500.00. The second Determination concluded that, on the basis of Jaspal’s above-noted contravention of section 28 of the *Act*, and in consideration of Jaspal’s history from 1997 through 2000 of other violations of the *Act* and the *Regulation*, it was appropriate to cancel Jaspal’s Farm Labour Contractor license. The third Determination concluded that Jaspal’s had contravened section 18(4) of the *Employment Standards Regulation* (the “*Regulation*”) by failing to keep picking card records, and, pursuant to section 29 of the *Regulation*, ordered Jaspal’s to pay a \$0.00 penalty.

Jaspal’s alleges in its appeal from the first Determination that: one of the nine unlisted workers was employed by another farm labour contractor at the relevant time; two others of the nine workers were not its employees and were unknown to it; the other six workers were, at the relevant time, employed directly by the farmers; and the Director’s Agricultural Compliance Team had acted with questionable competency. Jaspal’s alleges in its appeal from the second Determination that it should not have had its license cancelled because the Determination against it for violating section 28 of the *Act* was wrongly issued. Jaspal’s appeals from the third Determination, alleging that the required picking card records were not its property, and were useless and unnecessary because it paid its employees on an hourly basis instead of on a piece rate basis.

The parties made written submissions in these appeals. Jaspal’s principal, Jaspal S. Randhawa (“Randhawa”), made appeal submissions and submissions in reply to the Director’s submissions in the three appeals.

### ISSUES

The issues to be decided are: whether Jaspal’s failed to list nine workers as its employees on its payroll records as required by the *Act*; whether Jaspal’s Farm Labour Contractor license was legitimately cancelled; and whether Jaspal’s failed to keep picking card records as required by the *Regulation*.

## THE FACTS AND ANALYSIS

### The First Determination

Jaspal's is a farm labour contractor enterprise incorporated in 1993. It was re-licensed on February 29, 2000 by the Director to employ and supply farm labourers from its 62 employees. Between August, 1997 and November, 1999, Jaspal's had received eight Determinations against it for contraventions of the *Act* and the *Regulation*. The last Determination against Jaspal's had cancelled its 1999 Farm Labour Contractor license.

On July 4, 2000 the Director's Agriculture Compliance Team (the "Team") attended at JK Berry Farm ("the JK farm") in Abbotsford and interviewed farmworkers there picking a berry crop. The Team also attended at Mohinder Gill Farms ("the Gill farm") in Surrey on July 19, 2000 and interviewed farmworkers who were picking berries. Upon being questioned, several farmworkers at both sites advised the Team that they were employed by Jaspal's. A Demand for Employer Records was served on Jaspal's on July 20, 2000 for production of records, including payroll records, daily logs, and picking cards as required by section 18(4) of the *Regulation*. An August 10, 2000 review of Jaspal's payroll records failed to show nine of the workers interviewed on July 4 and 19, 2000 who had said they were working for Jaspal's. Jaspal's did not produce any picking cards in response to the July 20, 2000 Demand.

Jaspal's says in its appeal documents that it did not know how the Team linked the nine workers to it. It says that three of the nine never worked for it. One of the three, Jaspal's says, was working for another contractor supplying labour to one of the farms at the same time as Jaspal's. If requested to by the Tribunal, Jaspal's offered to prove that six of the nine employees were employed by the farmer personally. With its appeal documents Jaspal's supplied notes dated September 28, 2000 from one seasonal full-time driver and one part-time driver. In the notes both drivers denied that they directly knew three of the nine unlisted farmworkers who had said they were working for Jaspal's. Both notes indicate that the drivers observed one of the three unknown workers being employed by another contractor at the same farm as Jaspal's. The full-time seasonal driver's note also states that he later saw that worker being employed directly by the farmer at another of the farms to which Jaspal's supplied labour. Jaspal's supplied no notes or other records from the farmers allegedly directly employing the unlisted employees. Jaspal's also did not supply a note or records from the contractor who was allegedly employing one of the three "unknown" workers at one of the same farms that Jaspal's was supplying with labour.

The Director's delegate supplied documents with his submissions for the three appeals, including the Team's field interview sheets for its farm owner and farmworker interviews at the JK and the Gill farms in July, 2000. The sheets reflect the farmworkers' statements that they were working for Jaspal's. All nine of the unlisted employees' names appear on the farmworker interview sheets as having indicated they were working for Jaspal's. Three of the unlisted employees were interviewed at both the JK and Gill farms at the relevant dates and indicated on both dates that they were working for Jaspal's.

The Director's delegate also included notes he and an Employment Standards Officer made during their interview with Randhawa on September 22, 2000. The interview was conducted to hear from Randhawa his response to their findings that Jaspal's failed to include the nine employees on its July, 2000 payroll records, failed to keep picking card records for its employees

in July, 2000, and that cancellation of his company's Farm Labour Contractor license was likely. In the interview, Randhawa is recorded as stating that he "doesn't know who his driver picks up," and that he "delegated the job of keeping up-to-date daily logs to the driver." Randhawa told the Director's delegate that he made up the payroll records in reliance on the information supplied to him by the driver. Randhawa agreed it was his responsibility to list all employees on the payroll records, but said that he trusted the driver to provide the names required for the payroll records. The notes reflect Randhawa's contention that he did not know three of the unlisted farmworkers who alleged they were working for Jaspal's in July, 2000. He also told the Director's delegate that some worked directly for the farms, and that the driver might have brought relatives.

Section 28 of the *Act* lists clearly the detailed records an employer is required to keep about its employees. Jaspal's operated as a Farm Labour Contractor for seven years prior to the issuance of its February 29, 2000 license. It had previously been the recipient of several Determinations against it. Randhawa had also received on February 29, 2000 an informational package, including copies of section 28 of the *Act* and section 18(4) of the *Regulation*, delivered to all licensed Farm Labour Contractors in 2000 before harvest season. There is no reason to believe that Jaspal's was unaware of the requirements of section 28 of the *Act*.

By Randhawa's own admission, he was responsible for ensuring that all workers brought to a farm by Jaspal's driver were listed on the payroll records. Randhawa failed to provide evidence to counter the nine unlisted farmworkers' statements that they were working for Jaspal's. He supplied evidence from the Gill farm owner to the effect that the farm kept picking card records of its own, but did not supply evidence from the Gill or JK farms to support his contention that the unlisted workers were working directly for the farms at the relevant times. Neither did he supply evidence from the other contractor by whom one of the three "unknown" workers was employed at the JK or Gill farm, despite the drivers' notes indicating that they had learned of this employment relationship subsequent to the issuance of the Determinations. Questions of credibility are involved in this matter. Randhawa and his drivers claim not to know three of the nine unlisted workers. The workers themselves stated to the Team that they were working for Jaspal's. To determine which statements should be preferred, I am guided by the well-known test set out in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 356-357 (B.C.C.A.):

"The credibility of interested witnesses, particularly in cases on conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."

Here, the interviewed workers had no apparent reason to lie about who was employing them. Jaspal's, on the other hand, had much at stake, considering its history of a previous license cancellation and numerous Determinations issued against it. It is also telling that Jaspal's produced no records or explanatory notes concerning the direct employment by the farms of several of the unlisted workers, as it did with regard to the picking cards. In all, I find more probable the statements of the workers indicating that they were employed by Jaspal's in

July, 2000 at the times relevant to the Determination. I find that the Director's delegate properly applied the 3-step analysis described in *Narang Farms Ltd.*, BC EST #D482/98, by finding in this case a contravention of section 28 of the *Act*, exercising his discretion to determine whether a penalty was appropriate in the circumstances, and determining a \$500.00 penalty in accordance with the provisions of section 28 of the *Regulation*.

### **The Second Determination**

Jaspal's appeals from the decision of the Director's delegate to cancel its Farm Labour Contractor license. The decision was made further to the Director's delegate finding Jaspal's in contravention of section 28 of the *Act*, and further to Jaspal's history of contraventions of the *Act*. The Director's delegate supplied with his submissions a copy of the February 25, 2000 Status Report of previous Determinations issued against Jaspal's. He also supplied a copy of the Director's letter of August 10, 1998 empowering him to cancel Farm Labour Contractor licenses pursuant to the *Act* and the *Regulation*. There is no indication that the authority has been revoked, and must be concluded to continue to be valid.

Section 7(c) of the *Regulation* states:

*Cancellation or suspension of farm labour contractor's license*

7. *The director may cancel or suspend a farm labour contractor's license in any of the following circumstances:*

...

(c) *the farm labour contractor or an agent of the farm labour contractor contravenes the Act or this regulation.*

Here, Jaspal's either directly or through its agents, the drivers, failed to keep payroll records of all its workers in July, 2000. This is a contravention of the *Act*, as discussed above. The Director's delegate was properly empowered to cancel Jaspal's license, and I find that he exercised his discretion to do so in accordance with the *Act* and the *Regulation*.

### **The Third Determination**

Section 18(4) of the *Regulation* provides:

*18. Farm workers*

...

(4) *A farm labour contractor must keep records of the following information:*

(a) *the name of each worker;*

(b) *the work site location and dates worked by each worker;*

(c) *the fruit, vegetable, berry or flower crop picked in each day by each worker;*

(d) *the volume or weight picked in each day by each worker.*

Jaspal's admits that it did not issue picking cards to its employees while at the JK or Gill farms in July, 2000. Jaspal's instead contends that the Director's delegate has not proven that the cards were in its possession, and offers a note from the owner of the Gill farm to show that the cards were used solely by the farm. Jaspal's appears to have desired to shift the burden of maintaining picking card records on the basis of its alleged use of hourly wage payments, but it nevertheless makes a clear admission that it contravened the requirements of section 18(4) of the *Regulation* by failing to keep picking cards. Where the Director finds a violation of the *Act* or *Regulation*, section 98 of the *Act* provides:

**98. Monetary penalties--(1)** *If the director is satisfied that a person has contravened a requirement of this Act or the regulations or a requirement imposed under section 100, the director may impose a penalty on the person in accordance with the prescribed schedule of penalties.*

As was stated in *Punjab Labour Supply Ltd.*, BC EST #D392/98, all that is required for proper issuance of a penalty under section 29 of the *Regulation* is proof of violation of the *Act* or the *Regulation*. Such proof was offered by the Director and by the admission made by Jaspal's. I find that the Director's delegate properly applied the 3-step test from *Narang Farms Ltd.*, *supra*, as described above, by finding in this case a contravention of section 18(4) of the *Regulation*, exercising his discretion to determine whether a penalty was appropriate in the circumstances, and determining a \$0.00 penalty in accordance with the provisions of section 29 of the *Regulation*.

## **ORDER**

Pursuant to section 115 of the *Act*, I order that the three Determinations issued September 22, 2000 are confirmed.

**Michelle Alman**

**Michelle Alman**

**Adjudicator**

**Employment Standards Tribunal**

MA/bls