

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 -

Dan Singh Sangha and Charan Sangha
operating as Sangha Farms
("Sangha Farms")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Richard S. Longpre

FILE NO.: 98/584 & 98/585

DATE OF HEARING: November 3, 1998

DATE OF DECISION: November 17, 1998

DECISION

APPEARANCES

Dan Singh Sangha	for Sangha Farms
James Walton	for the Director
Pavi Toor	for the Director

OVERVIEW

This is an application by Sangha Farms pursuant to Section 112 of the *Employment Standards Act*. Sangha Farms operates as a farm labour contractor in the Province. Sangha Farms appeals two Determinations by a delegate of the Director. The first Determination, dated September 2, 1998, found that in June 1998 Sangha Farms failed to pay its employees semi-monthly as required by section 17(1) of the *Act*. This was Sangha Farms' second breach of Section 17(1) and Sangha Farms was fined \$150 for each of its 15 employees, for a total fine of \$2250.00. Sangha Farms argues that, in the circumstances of this case, it was not reasonable for the Branch to impose the monetary fine.

The second Determination, also dated September 2, 1998, cancelled Sangha Farms' farm labour contractor license. Sangha Farms successfully reapplied for its farm labour contractor on the same day that the license was revoked. Accordingly, that issue need not be addressed.

ISSUE TO BE DECIDED

In the circumstances of the case, was it appropriate to impose a penalty of \$2,250 on Sangha Farms for its failure to pay its employees in accordance with the *Act*?

FACTS

Dan Singh Sangha operated Sangha Farms as a farm labour contractor for over twenty years. In early June 1998, Sangha Farms hired a number of employees who commenced work at farm locations on June 8, 1998. Sangha understood that Sangha Farms was obliged to pay its employees every 15 days or semi-monthly.

Sangha explained that Sangha Farms' employees would normally have been paid on June 15 and June 30, 1998. This year, the employees commenced work on June 8. Sangha believed that Sangha Farms was obliged to pay its employees 15 days later; in this case, that was on June 23, 1998. This resulted in Sangha Farms' employees missing the June 15th pay day. The next pay day was June 30. Sangha Farms' employees were paid all wages owing at that time

On behalf on the Director, Walton explained that the Branch has had concerns about the non-compliance with the *Act* by the farm labour contractors. In 1997, the Branch set up a program to closely monitor farm labour contractors' compliance with the *Act*. In the first year, there were over 52 determinations issued to some of the approximately 85 farm labour contractors: less than 10 of those determinations were monetary fines. In 1998, there have been 32 determinations issued to some of approximately 95 farm labour contractors: over 16 of these determinations were monetary fines. Walton explained that consistent enforcement of the *Act* throughout this industry has been the Branch's main focus.

Walton reviewed the several stages a farm labour contractor must undertake each year before being granted a farm labour contractor licensee. Sangha Farms successfully completed the tests for the issuance of his 1998 license. Walton also explained that the Branch provided all farm labour contractors with assistance in complying with the *Act*.

Walton explained the importance of the *Act's* application to farm labour contractors. He explained the several steps the Director takes to ensure that every farm labour contractor understands it obligations under the *Act*. He reviewed Sangha Farms' involvement in that program. He noted the assistance Sangha Farms was provided to ensure its compliance with the *Act* and *Regulations*. He pointed out that this was Sangha Farms' second offense of Section 17(1) of the *Act*. Walton also noted that Sangha Farms had also been found to have breached other provisions of the *Act*.

Walton noted that this was Sangha Farms' second offense for the same matter. On September 4, 1997, Sangha Farms was found to have contravened Section 17(1) of the *Act* for the same reasons. The Branch's September determination was given to Sangha Farms in writing. It was also discussed with Sangha. While Sangha could not recall this first incident, the Branch had all the relevant documents that established that in fact, it did happen.

The \$150 fine per worker was mandated by the second contravention of Section 17(1) of the *Act*. Walton noted that the Determination concluded that 15 employees were affected by the contravention of the *Act*. Sangha agreed that during this time, Sangha Farms employed up to 50 farm workers. He acknowledged that Sangha Farms contravened the *Act*. He argued that the breach was not significant. It was a result of his misunderstanding of the *Act* and that all of his employees were properly paid at the end of June. His written appeal submission sets these points as follows:

We promise you that this mistake would not happen again. We are trying our best to follow all the recommendations of Employment Standards Act. Sometimes the mistakes have happened because of ignorance of certain sections of the act. Otherwise all our employees are fully satisfied with us since last twenty years and the majority of our employees are the same since last twenty years.

ANALYSIS

A recent decision of the Tribunal, *Agro Harvesting Ltd.* (BC EST #D509/98), reviews the statutory framework of this industry, the procedural fairness the *Act* and *Regulations* warrants a farm labour contractor and the proper exercise of the Director's discretion in imposing a penalty and cancelling a farm labour contractor's license. I have applied the principles of that decision to the case before me. At the outset, the Director's delegate exercised authority consistent with the *Act*. The only issue is whether it was reasonable to impose the monetary penalty. Sangha's only argument is that it was an unreasonable penalty given that its employees were paid their wages, albeit two weeks late.

Section 5(2)(c) of the *Regulation* directs that Sangha understands the requirements of the *Act* before Sangha Farms' is issued its license. It reads:

5(2) The director may issue a license *only if the applicant has*

(c) satisfied the director by an oral or written examination, or both, of the applicant's knowledge of the *Act* and this regulation

(emphasis added)

Sangha was taken through the extensive program that ensured he understood Sangha Farms' obligations. Sangha acknowledged that the late payment of wages was in breach of the *Act*. Accordingly, Sangha argument of "mistake" is not supported by the evidence. I am satisfied that he chose, for whatever reason, to not comply with the *Act*.

This was Sangha Farms' second contravention of the same provision of the *Act*. He stated that he could not recall the determination that was issued in September 1997. His lack of recollection suggests that he did not take Sangha Farms' earlier contravention of the *Act* seriously.

The *Act* mandated the \$150 penalty per employee. The Director has no discretion on the amount of this penalty. The penalty applied to Sangha Farms is specified in Section 29(2) of the *Employment Standards Regulation*:

29. (2) The penalty for contravening a specified provision of a Part of the *Act* or of a Part of this regulation is *the following amount*:

- (a) \$0, if the person contravening the provision has not previously contravened any specified provision of that Part;
- (b) \$150 multiplied by the number of employees affected by the contravention, if the person contravening the provision has contravened a specified provision of that Part on one previous occasion;

(c) \$250 multiplied by the number of employees affected by the contravention, if the person contravening the provision has contravened a specified provision of that Part on 2 previous occasions;
(emphasis added)

The Director has made every effort, to apply the *Act* and *Regulation* consistently and fairly to all labour farm contractors. Sangha Farms was one of several labour contractors who received monetary penalties in 1998. The delegate was fair in determining how many employees were on Sangha Farms' payroll between June 8 and June 15. Any doubt in the number of employees was settled in Sangha Farms' favour. Sangha agreed the delegate's determination was fair. Accordingly, there was no basis to review the amount of the penalty: \$2250.00 was both consistent and fair.

Sangha Farms' employees started on June 8 and should have been paid up within 8 days of June 15. They were paid on July 8. A delay in payment of wages can be difficult for an employee to tolerate. Sangha Farms' delay in paying its employees was most unreasonable.

ORDER

Pursuant to Section 115 of the *Employment Standards Act*, the Determinations of September 2, 1998 are confirmed.

Richard Longpre
Adjudicator
Employment Standards Tribunal