

An appeal

- by -

Valley Agro Ltd.
("VAL")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: David B. Stevenson

FILE No.: 2001/540

DATE OF DECISION: October 22, 2001

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Valley Agro Ltd. (“VAL”) from a Determination that was issued on June 29, 2001 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that VAL had contravened Part 2, Sections 6(1)(f) and 6(5) of the *Employment Standards Regulation* (the “*Regulation*”) and imposed a \$150.00 penalty under Section 98 of the *Act* and Section 29 of the *Regulation*.

VAL raises two grounds of appeal:

1. There was no contravention of Section 6(1)(f) because there is no requirement in the *Regulation* that a vehicle used in the transportation of farm employees be registered and VAL had provided the Director with the registration number and licence number of each vehicle used; and
2. Section 6(5) of the *Regulation* is unconstitutional, presumably because it does not require to the records referred to in that subsection to be kept in both official languages.

ISSUE

The issue here is whether VAL has shown the Determination is wrong.

FACTS

On June 25, 2000, the Director issued a penalty Determination in the amount of \$0.00 against VAL, based on a finding that VAL had contravened Section 6(5) of the *Regulation*. That Determination was not appealed.

On June 22, 2001, the Director’s Agriculture Compliance Team conducted a site visit at Townline Growers located in Chilliwack. The investigation revealed that the daily log maintained at the site was in Punjabi. The Team also found that a blue van, licence plate number 0741 DY had not been registered with the Director. In a telephone conversation June 27, 2001 between Arvinder Randhawa, of VAL, and a representative of the Director, Ravi Sandhu, Mr. Randhawa acknowledged the daily logs were in Punjabi and the vehicle was not registered.

In the appeal, VAL contends that they met the requirement of Section 6(1)(f) as they had filed with the Director an up to date list of the registration and licence numbers of each vehicle used by them to transport employees.

In response, the Director says:

The appellant did not file with the director the registration and licence numbers of the blue Ford van with licence plate # 0741 DY. Nor did the appellant file with the director copies of the inspection certificate. Copies of the vehicle insurance and inspection certificate were faxed to the Abbotsford office of the Employment Standards Branch on June 27, 2001 (see attachment).

ARGUMENT AND ANALYSIS

The appeal is dismissed.

The material on file reasonably supports the conclusion that VAL contravened Section 6(1)(f) of the *Regulation*. There is an obligation on a Farm Labour Contractor to file certain information with the Director about the vehicles being used by the Contractor to transport employees. While the *Regulation* does not use the term “register”, it is clear from the context in which the term appears in the Determination that it was being used only to describe the effect of the “filing” required by the *Regulation*. It is also obvious from the Determination that it was the requirements of Section 6(1)(f) and the failure to meet those requirements that was being addressed. The specific wording used in the Determination was:

The vehicle is not registered with the Director of Employment Standards *as required by section 6(1)(f) of the . . . Regulation.*

(emphasis added)

VAL does not deny that the daily logs were kept in Punjabi. The *Regulation* requires the daily log be kept in English. VAL says that is unconstitutional. I disagree, but even if VAL is correct, the appropriate remedy is not to strike down the offending provision, but to order it to conform to the language equality provisions of the *Canadian Charter of Rights and Freedoms* by requiring the daily logs be kept in both official languages. There is an old adage about being careful what you wish for that applies directly to this ground of appeal. The fact, however, is that VAL kept the daily log in Punjabi and that is a contravention of the *Regulation*, whether you read in the language equality provision of the *Charter* or not.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated June 29, 2001 be confirmed.

David B. Stevenson
Adjudicator
Employment Standards Tribunal