

An appeal

- by -

SN Farm Contractors Ltd.  
("SN Farm")

- 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:** Carol L. Roberts

**FILE No.:** 2001/587

**DATE OF DECISION:** October 22, 2001

## DECISION

This is a decision based on written submissions by Makhan Singh Sidhu on behalf of S.N. Farm Contractors Ltd., and J. V. Walton for the Director of Employment Standards.

### OVERVIEW

This is an appeal by S.N. Farm Contractors Ltd. ("S.N. Farms"), pursuant to Section 112 of the Employment Standards Act ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued July 25, 2001. The Director found that S.N. Farms contravened Section 46 of the Employment Standards Regulations in failing to produce proper payroll records, and Section 28 of the Act in failing to keep proper payroll records. SN Farms was Ordered to pay \$500.00 to the Director for the contravention, pursuant to Section 28 of the Act.

### ISSUE TO BE DECIDED

Whether the Director erred in assessing a penalty for failing to provide payroll records.

### FACTS

The facts found by the delegate are as follows.

On June 26, 2001, during the course of investigating a complaint, the Director's delegate issued a Demand for payroll Records to S.N. Farms. Those records were received on July 10, 2001.

Upon review of those records, the delegate determined that they did not record daily hours, as required by s. 28 of the Act. Rather, they recorded cumulative weekly hours. The delegate noted that, on February 28, 2001, S.N. Farms had been served with a notice letter setting out the requirements of s. 28, and indicating that further non-compliance would result in a \$500.00 penalty, in accordance with s. 28 of the Employment Standards Regulation.

The delegate found S.N. Farms in contravention of Section 28 of the Employment Standards Regulations, and imposed a penalty of \$500.00.

### ARGUMENT

S.N. Farms contends that its accountant did not record daily hours, but weekly hours. In his appeal letter, Mr. Sidhu states:

...Hours were written for each week. Daily log sheets were attached with the payroll sheets on which hours worked for each day were maintained. Officer did

not look on the hours on the log sheets. Accountant has started showing hours in future for each day.

Mr. Sidhu states that he has transferred the daily hours from the logs to the payroll sheets, and asks that the penalty be set aside.

The Director's delegate submitted that S.N. Farms was issued a demand for payroll records on February 5, 2001, and that the records were produced on February 22, 2001. Those payroll records did not contain a daily account of hours worked by each employee, so a notice letter setting out the requirements of the Act was issued to S.N. Farms, along with a warning that future instances of non-compliance would result in a \$500.00 penalty.

A subsequent demand for payroll records for the period January 1, 2001 to June 25, 2001 was issued on June 26, 2001. Those records showed that S.N. Farms had failed to maintain a daily account of hours worked by each employee. The delegate acknowledged that daily hours were recorded on the daily logs that were submitted with the payroll records.

The delegate argues that:

The requirement for Farm Labour Contractors to maintain daily logs under section 6(4) of the Regulations does not replace the need for maintaining payroll records as required by section 28 of the Act. ...Based on the above the Director is of the view that a disincentive is needed to promote compliance with the Act and to prevent a repeat contravention.

## **ANALYSIS**

Section 2 of the Act outlines the purposes of the Act. Those include ensuring that employees in British Columbia receive at least basic standards of compensation and conditions of employment and promoting the fair treatment of employees and employers. It is against these principles that other sections of the Act are interpreted.

Section 85(1) of the Act provides that for the purpose of ensuring compliance with the Act and the Regulations, the Director may (c) inspect any records that may be relevant to an investigation under this Part, and (f) require any person to produce or deliver to a place specified by the director, any records for inspection under paragraph (c).

Section 28 of the Act provides as follows:

- (1) For each employee, an employer must keep records of the following information:
  - (a) the employee's name, date of birth, occupation, telephone number and residential address;
  - (b) the date employment began;

- (c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis;
- (d) the hours worked by the employee on each day, regardless of whether the employee is paid on an hourly or other basis;
- (e) the benefits paid to the employee by the employer;
- (f) the employee's gross and net wages for each pay period;
- (g) each deduction made from the employee's wages and the reason for it;
- (h) the dates of the statutory holidays taken by the employee and the amounts paid by the employer;
- (i) the dates of the annual vacation taken by the employee, the amount paid by the employer and the days and amounts owing;
- (j) how much money the employee has taken from the employee's time bank, how much remains, the amount paid and dates taken.

Section 6 (4) provides that a farm labour contractor must keep at the work site and make available for inspection by the director a daily log that includes:

- (a) the name of each worker,
- (b) the name of the employer and work site location to which workers are supplied and the names of each workers who work on that work site on that day.
- (c) the dates worked by each worker

...

Section 46 of the Employment Standards Regulations provides that a person who is required under Section 85 of the Act to produce or deliver records to the director must produce or deliver the records as and when required. Section 28 provides for a \$500.00 penalty for a contravention of section 46 of the Regulation.

In 478125 B.C. Ltd. v. British Columbia (Director of Employment Standards) Bcest D. 279/98) the Tribunal emphasized that the requirement to maintain records pertaining to employment and hours of work is on the employer. The Tribunal held that it was the employer's responsibility to structure its affairs to comply with the Act.

While there is no dispute that S.N. Farms failed to list the daily hours of work on the payroll sheet, there was nevertheless a daily log attached to the payroll sheet which set out the name of each employee, the start and finish time of each employee, as well as the total hours worked. Consequently, I am unable to find that SN Farms was in violation of s. 28. The fact is that S.N. Farms did keep a record of the hours of work of each employee on a daily basis. It appears that the penalty was imposed solely because the daily hours of work of each employee, which were recorded on the log and which accompanied the payroll records, were not transferred onto the payroll sheet.

Section 28 does not prescribe the form of records that are to be kept, only that an employer must keep records of the hours worked by an employee each day. S.N. Farms has done that.

Consequently, I find SN Farms in compliance with the Act, and allow the appeal.

**ORDER**

I Order, pursuant to Section 115 of the Act, that the Determination, dated July 25, 2001, be cancelled.

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**Carol L. Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**