

An appeal

- by -

J. K. Workforce Ltd.
(the "Appellant")

- 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: E. Casey McCabe

FILE No.: 2001/704

DATE OF DECISION: December 17, 2001

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by J.K. Workforce Ltd. (the “contractor”) from a Determination dated September 18, 2001. That Determination found the contractor had breached section 18(4) of the *Employment Standards Regulation* (the “*Regulation*”). Specifically the contractor, as a farm labour contractor as defined under the Act, had not kept records as required under this section. No monetary penalty was imposed on the contractor for the breach.

ISSUE(S) TO BE DECIDED

1. Does Section 18(4) of the Regulation apply when the farm workers are paid an hourly wage rather than piece work?

FACTS

The appellant is a farm labour contractor. On August 28, 2001 the employer was served with a demand to produce payroll records, cancelled cheques, bank statements, daily logs and records required by section 18(4) of the *Regulation*. The employer replied that since the workers were paid on an hourly basis no record of volume or weight picked by each employee had been kept.

ANALYSIS

Section 18(4) is found in Part 4 of the *Regulation*. It reads as follows:

- 18(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.

The contractor’s brief submission states that it does not believe this section applies when the workers are paid solely by an hourly wage. In a later submission, the contractor contends that the Regulation discriminates between berry picking and other vegetables. The contractor argues that there are certain other vegetables, i.e. potatoes, cauliflower, cranberries and broccoli, not

included in the list in section 18(1) that are picked by workers where the farm labour contractors do not have to keep records of the weight or volume picked and where the workers are paid by the hour. I note that the crop in question is strawberries which are included under section 18(1).

There is a certain logic in the contractor's first position. Part 4 of the *Regulation* deals with the minimum wage to be paid to workers, whether by hour, by day, or by piece work. Section 18(1) sets out the minimum wage to be paid to farm workers when they are paid by piece work for harvesting the listed crops. This wage is based on gross volume or weight picked for certain fruit, vegetable or berry crops. Section 18(4)(c)&(d) would seem to be aimed at providing written records to ascertain whether the workers are being paid at least the minimum rate. Regardless the language used in section 18(4) is mandatory. The *Regulation* states that the farm labour contractor must keep these records. There is nothing in this section that states that these records need only be kept if the workers are being paid for piece work. I note that section 6(4)(d) and (e) of the *Regulation* repeats the requirement for the farm labour contractor to keep records of the crop picked and the volume and weight picked by each worker daily.

As to the second ground of appeal the contractor lead no evidence of any discriminatory practice related to the requirement, or lack thereof, to keep these records for certain other crops. The fact that the Legislature chose not to include the crops in section 18(1) that the contractor mentioned in his submission does not make the requirement to keep records discriminatory. Section 18(1) specifies the minimum piece work rate to be paid for the listed crops. It does not preclude a person from paying an hourly rate for picking these crops. Furthermore, as already mentioned, section 6(4)(d) of the *Regulation* requires records to be kept of crops picked notwithstanding the method of paying employees.

ORDER

The Determination dated September 18, 2001 is confirmed.

E. Casey McCabe
Adjudicator
Employment Standards Tribunal