An application for Reconsideration

- by -

The Director of Employment Standards
(the "Director")

- of a Decision issued by -

The Employment Standards Tribunal
(the "Tribunal")

pursuant to Section 116 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

TRIBUNAL MEMBER: Shafik Bhalloo

FILE No.: 2008A/128

DATE OF DECISION: December 18, 2008

DECISION

OVERVIEW

1. This is an application under section 116 of the *Employment Standards Act* (the "*Act*") for reconsideration of a Decision (DC EST #D103/08) issued by the Employment Standards Tribunal on October 16, 2008 (the "Original Decision"). The Original Decision cancelled the determination issued by the Director of Employment Standards (the "Director") on July 14, 2008 (the "Determination") wherein the Director ordered Qualified Contractors Ltd. ("Qualified") to cease contravening section 6.1 of the *Employment Standards Regulation* (the "*Regulation*") and imposed on the latter a $500.00 administrative penalty pursuant to section 29(1) of the *Regulation*.

2. The Director applies for reconsideration of the Original Decision on the grounds that it contains serious errors of law and principle, namely:

- The Member's interpretation of the provisions of section 6.1 of the *Regulation* is a serious error of law in that it is not made in accordance with the contextual and purposive approach required for proper interpretation of benefits conferring legislation and results in absurdity;
- The Member erred in law and in principle in substituting his assessment of the evidence for that of the Delegate; and
- The Member erred in law and in principle in finding that the Delegate gave insufficient reasons for her decision in the Determination.

3. Pursuant to section 36 of the *Administrative Tribunal's Act* (the "*ATA*"), which is incorporated into the *Act* (S. 103), and Rule 17 of the Tribunal Rules of Practice and Procedure, the Tribunal may hold any combination of written, electronic and oral hearings. In my view, an oral hearing of the reconsideration application is not necessary and therefore, I propose to adjudicate the Director's reconsideration application based on the written submissions of the parties and a review of both the Determination and the Original Decision.

ISSUES

4. In a reconsideration application, there is always a threshold issue of whether the Tribunal will exercise its discretion under section 116 of the *Act* to reconsider the Original Decision. If the Tribunal, in determining the threshold issue, is satisfied that the case is appropriate for reconsideration the Tribunal will then proceed with consideration of the substantive issues or the merits of the application. In this case, the substantive issues are threefold:

1. Whether the Member's interpretation of the provisions of section 6.1 of the *Regulation* is a serious error of law because it is not made in accordance with the contextual and purposive approach required for proper interpretation of benefits conferring legislation and results in absurdity?
2. Whether the Member erred in law and in principle in substituting his assessment of the evidence for that of the Delegate?

3. Whether the Member erred in law and in principle in finding that the Delegate gave insufficient reasons for her decision in the Determination?

FACTS

5. According to the Determination, Qualified is a licensed farm labour contractor ("FLC") under the *Act*.

6. On June 24, 2008, Qualified was providing contract labour to Khakh Berry Farms ("KB Farms") for the worksite located on Watson Road, in Chilliwack, British Columbia, when the Agricultural Compliance Team (the "Team") of the Employment Standards Branch conducted a worksite visit.

7. During the worksite visit, the Team discovered that Qualified had five vehicles parked on site for transporting farm workers to KB Farms and all vehicles but one, with license plate number AN 5401 (the "Offending Vehicle"), had safety notices posted within them respecting vehicle and passenger safety requirements in accordance with section 6.1 of the *Regulation*. As a result, on June 26, 2008 the delegate of the Director sent a letter (the "delegate's Letter") to Qualified advising the latter of her finding that Qualified was in breach of section 6.1 of the *Regulation* and afforded Qualified an opportunity to respond, if Qualified disagreed with the said finding.

8. On or about June 30, 2008, Qualified's Harbhajan Shoker ("Shoker") responded to the delegate's Letter advising that all of the vehicles, including the Offending Vehicle, were checked in the morning by their respective drivers and had safety notices posted "while they were transporting the farm workers to the site". While Shoker acknowledged in his response that the Offending Vehicle was missing a safety notice during the Team's worksite visit, he explains that since the safety notice has to be posted "where all the workers are able to view it", Qualified is not in a position to "keep it in a lock or something". Therefore, the safety notice "is accessible to anyone and anyone could have ripped it off". Shoker asks "why would we post a notice on all our buses except one?" Shocker further submits that on same day as the Team's worksite visit another safety notice was posted in the Offending Vehicle before the workers were transported back in the Offending Vehicle.

9. The delegate, in finding Qualified to have contravened section 6.1 of the *Regulation* in the Determination, stated:

> … Qualified was aware of the requirements of the Act and the Regulation, as it had been through the farm labour contractor licensing process on February 8, 2008. As part of the farm labour contractor licensing process and pursuant to Section 5(2) of this Regulation, Qualified was required to pass a written examination in order to satisfy the Director of their knowledge of the Act and the Regulation. Prior to the written examination, applicants are issued an application package that includes a study guide on the relevant requirements of the Act and the Regulation. Also, during the licensing process, applicants are taken through an interview checklist to ensure their understanding of the requirements of the Act and Regulation. Furthermore, during the licensing process, applicants are provided with a copy of the vehicle safety notice required by Section 6.1. They are also informed of the fact that they must post it in a location that is clearly visible to the passengers of the vehicle used for transporting farm workers.
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> Qualified failed post [sic] a vehicle safety notice, within the vehicle, provided by the Director respecting vehicle and passenger safety requirements and thus has contravened Section 6.1 of the Regulation.
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> Shoker's statement that somebody might have 'ripped off the notice' is insufficient. It is the employers' responsibility to ensure that each and every vehicle has a vehicle safety notice posted within it when used to transport employees.

10. Based on the foregoing reasons and analysis, the delegate determined that Qualified had breached section 6.1 of the *Regulation* for failing to post a vehicle safety notice within the Offending Vehicle and imposed an administrative penalty of $500.00 on Qualified pursuant to section 29 of the *Regulation.*

11. Qualified appealed the Determination on the basis that the Director failed to observe the principles of natural justice in making the Determination.

12. Shoker, on behalf of Qualified, made written submissions in the appeal seeking cancellation of the Determination. The submissions are very brief and I propose to set them out verbatim as follows:

> Qualified Contractors had a notice posted within every vehicle that was operating that day, it is part of the daily vehicle maintenance routine that each of our drivers follow; all the vehicle maintenance is checked, all the safety equipment is checked and so is the safety notice, before any vehicle is put on to the road and any passenger get into it. On the day of June 24th, each vehicle had gone through that routine and every vehicle had a safety notice posted in it. When the visit was conducted by the team one of the vehicles had no safety notice posted in it, but the imprints of the posted notice had still been left on the vehicle. When later asked by the supervisor employees had mentioned that they had took off [sic] the notice in order to read it among themselves, but had left it on the side of the seats in the vehicle. On the other hand the company has a plan for these types of issues, our supervisors there have several copies in case the paper is 'ripped' or damaged. This is not the first time someone has taken off this paper, which is there for the safety of the passenger for them to read [sic] and understand, whenever this has happened it is always replaced at the end of the day before any workers are transported from the site. Even on that day, June 24th 2008, a copy was taken and replaced on the vehicle, before any worker was taken off site. One other point is that we cannot lock the vehicle once they are at the site, some people come there and rest, while others keep their lunch boxes and personal belongings there, therefore the vehicles are kept open for all employees to use them. We cannot place a lock or security feature on the piece of paper, it is clearly stated in section 6.1 subsection 2, *that the safety notice must be displayed in one or more positions in the vehicle that are clearly visible to the driver or operator of the vehicle and employees riding in the vehicle*, therefore it is reachable for everyone and we cannot place a lock to it, and we cannot screw it on to the wall, because it is just a thin piece of paper. It is out of our power if someone had ripped it off or damaged the piece of paper within the 8-10 hour work period when the vehicle is not used, but what is in our power is to replace it and check it every time the employees are being transported, which we do follow very closely. One other point stated in the determination was that Qualified had passed a written exam in order to get this license, and prior to the exam Qualified was explained that they had to post these safety notices with in all the vehicles, and we have followed that to the best of our abilities and in every possible [sic] that is within our power.

13. In response to Qualified's appeal submissions, the Director stated that Qualified's arguments in its submissions are the same as those presented to the delegate of the Director before the Determination was made and furthermore the submissions were considered and addressed by the delegate in the Determination.

14. In the Original Decision, while agreeing with the Director that Qualified's submissions on appeal are the same as those Qualified made to the delegate before the Determination was made, the Member states that the Director erred in the Determination in interpreting of Section 6.1 of the *Regulation*. In particular, the Member states in the Original Decision:

> Section 6.1of the *Regulation* requires that a safety notice be posted "in one or more positions in the vehicle that are clearly visible to the driver or operator of the vehicle and employees riding in the vehicle".

> I interpret the language of the provision to require the notice to be posted when the vehicle is in operation and there are employees riding in it. There is no requirement that the notice be permanently affixed to the vehicle or that any vehicle used for the transport of employees have a notice so posted at all times, including when the vehicle is not in use.
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> …
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> I find that the Director erred in his Determination. A careful reading of the Determination reveals no evidence whatsoever that the Employer failed to comply with Section 6.1 of the *Regulation*. The section requires that the safety notice be posted while the vehicle is being used to transport workers. The inspection team observed the vehicle without the posting while the vehicle was parked, unoccupied, and not being used for any purpose. The question that the Director was obligated to consider was whether the vehicle was used to transport workers without the notice posted as required.

15. The Member was also critical of the assessment of the evidence by the delegate and found that the delegate failed to provide sufficient reasons for her decision in the Determination. In particular, the Member stated:

> Mr. Shoker stated that the notice was present in the morning and might have been removed since. He also described a policy or system of driver checks designed to ensure compliance with the *Regulation* and specifically that the notice was posted as required. This was the only evidence available to the Director as to whether the notice was indeed posted when that vehicle was used to transport workers. Without clearly pronounced reasons why that sole piece of evidence should not be relied upon, the Director cannot simply find the contrary by calling Mr. Shoker's statement "insufficient". The Director also failed to consider the presence of the notice in four of the other vehicles as evidence in support of Mr. Shoker's submission regarding the Employer's policy and system.

16. As a result, the Member concluded the Determination was based on insufficient evidence of non-compliance on the part of Qualified and without proper consideration of the evidence of Qualified. Furthermore, the Member also concluded that the Director failed to provide sufficient reasons for her decision, all of which, according to the Member, constituted a breach of the principles of natural justice on the part of the Director warranting a cancellation of the Determination.

ANALYSIS ON THE PRELIMINARY ISSUE

17. As indicated previously, there is a preliminary or a threshold issue of whether the Tribunal should exercise its discretion to reconsider the Original Decision. In *Re Eckman Land Surveying Ltd.* BC EST #RD413/02, the tribunal stated that "reconsideration is not a right to which a party is automatically entitled, rather it is undertaken at the discretion of the Tribunal". It is only in exceptional circumstances that the Tribunal will agree to reconsider a decision because the *Act* intends that the Tribunal appeal decisions be final and binding.

18. Having said this, the most noteworthy and often quoted decision governing reconsideration applications pursuant section 116 of the *Act* is the Tribunal's decision in *British Columbia (Director of Employment Standards) (sub no. Milan Holdings Ltd.*), BC EST #D313/98. In *Milan Holdings*, the Tribunal delineated a two-stage process governing its decision to exercise the reconsideration power. First, the Tribunal must decide whether the matters raised in the application warrant reconsideration. In determining this question, the Tribunal will consider a non-exhaustive list of factors that include such

factors as: (I) whether the reconsideration application was filed in a timely fashion; (II) whether the applicant's primary focus is to have the reconsideration panel effectively "re-weigh" evidence already provided to the Member; (III) whether the application arises out of a preliminary ruling made in the course of an appeal; (IV) whether the applicant has raised questions of law, fact, principle, or procedure which are so significant that they should be reviewed because of their importance to the parties and/or their implications for future cases; (V) whether the applicant has made out an arguable case of sufficient merit to warrant the reconsideration.

19. Based on the guidelines, both statutory and in the Tribunal's own decisions referred to above, as well as the submissions of the Director on the preliminary issue (which I have carefully reviewed and considered but not set out verbatim here), I am persuaded that this is a case where the Tribunal should exercise its discretion in favour of reconsidering the Original Decision primarily because the Director's reconsideration application raises questions of law, fact and principle which are very significant and should be reviewed as a result of their importance to both employers and employees in the farm working community and because of their implications in future cases.

20. I also feel that the Director has made out an arguable case of sufficient merit relating to the substantive issues the Director raises in its reconsideration application to warrant a reconsideration of the Original Decision. This point will become more evident in my consideration of the substantive issues under the heading "Analysis" below.

21. Finally, in the interest of fully considering the balance of the factors delineated by the Tribunal in *Milan Holdings* on the preliminary issue, I also note that the Director's application is filed in a timely fashion, does not involve a preliminary ruling made in the course of an appeal and does not fall in the category of applications where the applicant's primary focus is to have the reconsideration panel re-weigh evidence already provided at the appeal stage.

22. Accordingly, I am of the view that this is a ripe case for the Tribunal to exercise its discretion in favour of reconsidering the Original Decision.

SUBMISSIONS OF THE DIRECTOR

23. As indicated above, the Director has made submissions on the preliminary issue, which I have carefully reviewed and considered in deciding to exercise my discretion, under section 116 of the *Act*, in favour of reconsidering the Original Decision. It is not my intention to set out those submissions here but it suffice to say that the submissions accord with the reasons I have set out above for exercising my discretion to proceed with the Director's reconsideration application.

24. With respect to the substantive issues in its reconsideration application, the Director makes very comprehensive submissions and I propose to delineate those submissions under separate subheadings below.

I. Member's interpretation of section 6.1 of the Regulation is a serious error in law.

25. The Director submits that section 6.1 of the *Regulation* imposes on a farm labour contractor a two-fold requirement: (i) in subsection 6.1(1) it mandates that the vehicles used by a farm labour contractor to transport farm workers must contain the notice of the minimum safety standards for transportation; and

(ii) in subsection 6.1(2) it requires the farm labour contractor to place the safety notice or multiple copies of the notice in a manner that renders it visible to both the vehicle driver and the passengers in the vehicle.

26. According to the Director, in the Original Decision, the Member only cites and considers subsection 6.1(2) to the exclusion of section 6.1(1) which caused the Member "to fall into the error of concluding that the Legislature intended to limit the safety notice posting requirement as applying only to times when it would be visible to the driver and any farm worker passengers … [when] the transport vehicle is actively being used to transport farm workers". The Director further submits that the Member's failure to interpret subsection 6.1(2) "in its entire context" together with the Member's "narrow and literal" interpretation of subsection 6.1(2) allowed the Member to make a serious error of law that should be corrected by this Tribunal's reconsideration decision.

27. The Director further submits that the Member by giving section 6.1 "the overly narrow interpretation … based on solely subsection 6.1(2)'s language ignores the beneficial safety purpose behind the section's adoption and renders the entire section absurd". The Director further explains that if the safety notice posting requirement in section 6.1 were only to apply during the transport of farm workers in the vehicle, then a contravention of that requirement could never be found unless a delegate were to attend in every vehicle used during the transportation of farm workers or unless the director were able to inspect all farm worker transport vehicles "during either their going to and coming from worksites". This, in the Director's view, is neither possible nor practical and therefore the interpretation of the Member of section 6.1 is "absurd and would defeat the legislature's effort to enhance farm workers safety during transport".

28. The Director's related submission under this ground of appeal is earlier referenced in the Director's submissions on the preliminary issue of whether the Tribunal should exercise its discretion under section 116 of the *Act* to reconsider the Original Decision. In particular, the Director calls for the Tribunal to consider the approach advocated by Supreme Court of Canada in *Re Rizzo and Rizzo Shoes Ltd.* [1998] 1 S.C.R. 27 in interpreting section 6.1 of the *Regulation.* In *Rizzo*, the Supreme Court advocates a purposive approach to interpreting statutes and requires contextual reading of the provision to be interpreted "harmoniously with the scheme of the *Act*, the object of the *Act* and the intention of parliament".

29. The Director also references a portion of the *Hansard* debates documenting a serious motor vehicle accident involving the deaths of three farm workers and serious injuries to a dozen or more others on March 7, 2007, which the Director relies upon to suggest that the impetus for the addition of section 6.1 of the Regulation by the Government relates to its "increased concern to ensure the safe transportation of farm workers".

30. On the basis of the guidance offered in *Rizzo* to statutory interpretation, *the Hansard* debates and the plain language of section 6.1 of the *Regulation*, the Director argues that the latter section "was added to the *Regulation* by the Legislature in order to improve farm worker safety during transport". As a result, the Director argues that the section "is a public safety provision and confers a benefit to farm workers such that it must be construed broadly in order to have its object fulfilled".

II. Improper substitution of member's factual assessment

31. The Director submits that the Member has also made a serious error of law and principle by substituting his assessment of the factual evidence that was before the Delegate for the latter's own assessment of that

evidence. In particular, the Delegate references paragraph 14 of the Original Decision wherein the Member states:

> I find that the Director erred in his Determination. A careful reading of the Determination reveals no evidence whatsoever that the Employer failed to comply with Section 6.1 of the *Regulation*. The section requires that the safety notice be posted while the vehicle is being used to transport workers. The inspection team observed the vehicle without the posting while the vehicle was parked, unoccupied, and not being used for any purpose. The question that the Director was obligated to consider was whether the vehicle was used to transport workers without the notice posted as required. Mr. Shoker stated that the notice was present in the morning and might have been removed since. He also described a policy or system of driver checks designed to ensure compliance with the *Regulation* and specifically that the notice was posted as required. This was the only evidence available to the Director as to whether the notice was indeed posted when that vehicle was used to transport workers. Without clearly pronounced reasons why that sole piece of evidence should not be relied upon, the Director cannot simply find the contrary by calling Mr. Shoker's statement "insufficient". The Director also failed to consider the presence of the notice in four of the other vehicles as evidence in support of Mr. Shoker's submission regarding the Employer's policy and system.

32. The Director submits that the quoted paragraph above shows that the Member, instead of considering whether the delegate "erred in law by making the Determination with[out] sufficient evidence or without considering Qualified's evidence", improperly substitutes his own interpretation of the record for that of the delegate. The Director elucidates this point further by noting that the delegate's factual finding of the presence of the vehicle without a posted safety notice at the farm worksite during work hours was uncontested by Qualified and both the Member and the delegate noted in their respective decisions that Qualified's representative, Shoker, described Qualified's morning inspection system and Shoker's explanation that the safety notice "might have been removed since". The Director contends that Shoker's explanation for the notice's absence is not definitive and merely a suggestion that the "removal could have happened after the vehicle arrived at the work site". Therefore, the Director submits that the Member's conclusion that Shoker's evidence was conclusive rather than merely suggestive is improper as it oversteps "the proper limit on the assessment of evidence underlying the Determination" by the Member.

33. In further support of the Director's ground of appeal under this heading, the Director cites and relies upon the discussion of the Supreme Court of Canada in *R v. R.E.M.*, [2008] SCJ No. 52 (Q.L.) pertaining to the adequacy of reasons in context of an appeal from a trial judge's reasons for judgment in a criminal proceeding. According to the Director, in *R.E.M.,* the Supreme Court decided that it was improper for a Court of Appeal to substitute its assessment of the evidence for that of the trial judge. The Director draws a parallel between the Court of Appeal in the *R.E.M.* decision and the Member and argues that the Member, in substituting his view of the evidence in the Original Decision for that of the delegate in her Determination, exceeded his jurisdiction. The Director adds that the delegate in the Determination cited an uncontested finding of a lack of safety notice in Qualified's Offending Vehicle, cited the evidence of Qualified on the subject and assessed it, albeit cursorily, in making the Determination. In the circumstances, the Director argues that the Member should not have substituted his view of the said evidence for that of the delegate and in so doing, exceeded his jurisdiction.

34. Finally, the Director submits that it is not a defence of a contravention under section 6.1 of the *Regulation* for the farm labour contractor to say that "it has a system of checks for notices prior to departures, or … [that the] majority of farm labour contractor's vehicles … have notices posted". Therefore, according to

the Director, the Member's assessment of Qualified's evidence leading him to read in these defences into section 6.1 of the *Regulation* caused him to err in law and that this error of law "compounds the Member's error of law and in principle in substituting his view of the evidence for that of the delegate".

III. Reasons for the Determination were adequate

35. The Director argues that the Member committed a serious error of law and principle in finding that the delegate failed to give sufficient reasons for her decision in the Determination. In support of this argument, the Director again refers to the decision of the Supreme Court of Canada in *R.E.M.*, *supra*, for its discussion on the adequacy of reasons in context of an appeal from a trial decision and relies specifically on the following passages in the said decision:

> There is no absolute rule that adjudicators must in all circumstances give reasons. In some adjudicative contexts, however, reasons are desirable, and in a few, mandatory. As this Court stated in *R. v. Sheppard*, [2002] 1 S.C.R. 869, 2002 SCC 26, at para. 18, quoting from *Baker v. Canada (Minister of Citizenship and Immigration*, [1999] 2 S.C.R. 817, at para. 43 (in the administrative law context), "it is now appropriate to recognize that, in certain circumstances, the duty of procedural fairness will require the provision of a written explanation for a decision". A criminal trial, where the accused's innocence is at stake, is one such circumstance.
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> [R]easons help ensure fair and accurate decision making; the task of articulating the reasons directs the judge's attention to the salient issues and lessens the possibility of overlooking or under-emphasizing important points of fact or law ….
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> It follows that courts of appeal considering the sufficiency of reasons should read them as a whole, in the context of the evidence, the arguments and the trial, with an appreciation of the purposes or functions for which they are delivered ….
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> These purposes are fulfilled if the reasons, read in context, show why the judge decided as he or she did. The object is not to show *how* the judge arrived at his or her conclusion, in at 'watch me think' fashion. It is rather to show *why* the judge made that decision…. What is required is a logical connection between the "what" – the verdict – and the "why" – the basis for the verdict. The foundations of the judge's decision must be discernable, when looked at in the context of the evidence, the submissions of counsel and the history of how the trial unfolded.
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> Explaining the "why" and its logical link to the "what" does not require the trial judge to set out every finding or conclusion in the process of arriving at the verdict….

36. On the basis of the guidance of the Supreme Court in the *R.E.M.* decision, the Director submits that the Member failed to consider the delegate's reasons in the Determination in context. In particular, the Director notes that the delegate found that one of Qualified's vehicles was missing a safety notice, which Qualified did not deny. The Director further notes that the Determination also noted that others of Qualified's vehicles contained the requisite safety notices and Shoker's statement pertaining to Qualified's system of morning inspections and his suggestion (which the delegate found "insufficient") that someone might have removed the safety notice in the Offending Vehicle. In the circumstances, the Director submits that the delegate did hear and consider Qualified's evidence but dismissed it. The Director also contends that a lack of "a more detailed review of the evidence" on the part of the delegate and the latter's "reasoning for finding [the evidence] insufficient" does not 'render the Determination's reasons insufficient.

QUALIFIED'S SUBMISSIONS

37. The Tribunal did not receive any submissions from Qualified in response to the Director's submissions.

ANALYSIS

38. I propose to consider each of the Director's grounds of appeal under headings corresponding to the Director's submissions.

I. Member's Interpretation of section 6.1 of the Regulation is a serious error in Law

39. Section 6.1 of the *Regulation* provides:

> **Additional duties of farm labour contractors – posting safety notices in vehicles**
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> 6.1 (1) A farm labour contractor must, in every vehicle used by the farm labour contractor to transport employees, post a notice provided by the director respecting vehicle and passenger safety requirements under the *Motor Vehicle Act* and the *Workers Compensation Act*, including driver, seating and seat belt requirements.
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> (2) A notice required to be posted under subsection (1) must be displayed in one or more positions in the vehicle that are clearly visible to the driver or operator of the vehicle and employees riding in the vehicle.

40. The Member, in the Original Decision, interprets section 6.1 as requiring the farm labour contractor to post in every vehicle it uses to transport its employees a safety notice when the vehicle is in operation and there are employees riding in the vehicle. The Member does not think that section 6.1 requires the safety notice to be permanently affixed to the vehicle or posted when the vehicle is not in use.

41. The Director disputes the Member's interpretation of section 6.1 as too narrow and based exclusively on consideration of subsection 6.1(2) without regard to the beneficial safety purpose of the entire section.

42. In my view, in considering the proper interpretation of section 6.1, the logical place to start is by looking to the *Interpretation Act*, R.S.B.C. 1996 c.238. More specifically, section 8 of the *Interpretation Act* provides:

> **Enactment remedial**
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> **8** Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

43. In the case of the *Act*, one of the objectives is to ensure that employees in British Columbia receive at least basic conditions of employment (section 2(a)), which has to include promotion of safety of employees through the *Regulation*. Section 6.1 of the *Regulation* is clearly designed to protect those workers in the employ of a farm labour contractor that travel in vehicles provided by their employer for transport in context of their employment. In accordance with section 8 of the *Interpretation Act*, this provision should be interpreted in such a way as to give proper effect to this intent.

44. Having said this, I also note that in *Rizzo, supra*, the Supreme Court of Canada determined that giving full effect to the true meaning, intent and spirit of the legislation must be a primary consideration in all cases

involving statutory interpretation. The Supreme Court, in *Rizzo*, adopted a passage from *Dreidger's Construction of Statutes* (2nd ed., 1983) which discussed the approach to be taken in statutory interpretation that echoes section 8 of the *Interpretation Act*:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

45. Also noteworthy in the Supreme Court's decision in *Rizzo* is its view of the counterpart to the British Columbia *Employment Standards Act*, namely, the *Employment Standards Act* of Ontario:

> Finally, with regard to the scheme of the legislation, since the *ESA* is a mechanism for providing minimum benefits and standards to protect the interests of employees, it can be characterized as benefits-conferring legislation. As such, according to several decisions of this Court, it ought to be interpreted in a broad and generous manner.

46. In addition to the approach to statutory interpretation in *Rizzo*, another important and very relevant principle of statutory construction identified by the Supreme Court can be found in *Canadian Oxy Chemicals Ltd.* v. *Attorney General of Canada*, 13 C.C.C. (3d) 426 (1999) (SCC) where the Supreme Court stated that statutes should be read to give words their most obvious and ordinary meaning which accords with the context and intent of the enactment. Major, J. speaking for the Court, stated:

> …only where there is a genuine ambiguity between two or more plausible readings, each equally in accordance with the intentions of statute, do the courts need to resort to external interpretative aids. (para.14)

47. Where there is any ambiguity in the statutory provision which calls for the use of external interpretative aids, the Supreme Court, in *Rizzo*, opined on the utility of legislative debates, *Hansard*, as follows:

> Although the frailties of Hansard evidence are many, this Court has recognized that it can play a limited role in the interpretation of legislation. Writing for the Court in *R. v. Morgentaler*, [1993] 3 S.C.R. 463, at p. 484, Sopinka J. stated:
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> > . . . until recently the courts have balked at admitting evidence of legislative debates and speeches. . . . The main criticism of such evidence has been that it cannot represent the 'intent' of the legislature, an incorporeal body, but that is equally true of other forms of legislative history. Provided that the court remains mindful of the limited reliability and weight of Hansard evidence, it should be admitted as relevant to both the background and the purpose of legislation.

48. In the case at hand, with great respect to the Member, the interpretation of section 6.1 of the *Regulation* by the Member fails to take into consideration the entire provision and the remedial nature of the enactment as well as the statutory interpretative principles delineated in the *Rizzo* and *Canadian Oxy* decisions. It appears that the Member, in the Original Decision, has focused significantly on subsection 6.1(2) to the exclusion of subsection 6.1(1) and interpreted the provision narrowly by importing a requirement that the vehicle used by the farm labour contractor to transport its employees must be "in operation and there are employees riding in it" before the requirement of the posting of a safety notice in the vehicle will come into effect. Subsection 6.1(2), based on my plain reading, simply deals with how the safety notice is to be displayed in the vehicle such that the notice is "clearly visible to the driver or operator of the vehicle and employees riding in the vehicle." Subsection 6.1(2), in my view, does not impose the requirement that the vehicle must be in *operation and the employees riding in it* at the time. I

am further encouraged and strengthened in this view when I consider subsection 6.1(2) together with subsection 6.1(1) and take into consideration the remedial nature of this enactment which has, as one of its objects, safety of employees.

49. Further, while I do not think, in the words of Major J. in *Canadian Oxy, supra*, that there is ***a*** "genuine ambiguity between two or more plausible readings" of section 6.1 of the *Regulation* to warrant my consideration of any extrinsic interpretative aid such as the *Hansard* debates provided by the Director in this case, my review of the *Hansard* debates submitted by the Director for the limited purpose of background and object of legislation (as approved by the Supreme Court in *Rizzo, supra*) only strengthens my conclusion that the Member's interpretation of section 6.1 is contrary to the scheme and object of the enactment.

50. Accordingly, I find that the Member erred in law in his interpretation of section 6.1 of the *Regulation* in importing the requirement that the vehicle must be in *operation and employees riding in it* for the requirement of the posting of safety notice in the vehicle to be effective.

II. Improper Substitution of Member's Factual Assessment

51. With respect to the Director's submission that the Member has made a serious error of law in principle by substituting his assessment of the factual evidence that was before the delegate for the latter's assessment, I find that this ground of appeal has sufficient merit based on my review of paragraph 14 of the Original Decision which is delineated verbatim in the submissions of the Director above. In particular, in paragraph 14 of the Original Decision, the Member, *inter alia*, is critical of the Director for failing to consider in the Determination the question of whether the Offending Vehicle was used to transport workers without the notice posted as required and for failing to consider, in this regard, the evidence of Shoker that the safety notice was present in the morning and might have been removed since and the policy or system of driver checks instituted by Qualified to ensure compliance with the *Regulation.* The Member also states that the Director failed to consider, in assessing the evidence, the presence of the safety notice in the four other vehicles of Qualified.

52. Since the Member's criticisms of the Director are based on the premise that section 6.1 of the *Regulation* requires that the vehicle used by the farm labour contractor to transport its employees must be "in operation and there are employees riding in it" before the requirement of the posting of a safety notice in the vehicle comes into effect and since I have found the Member committed an error of law in subscribing to this interpretation, the Member's assessment of the evidence and criticisms of the Director in this regard cannot be relevant and must fall.

III. Reasons for the Determination were adequate

53. In *Hilliard*, BC EST # D296/97, the Tribunal said:

> One of the purposes of the Act, as set out in Section 2, is to ". . . promote the fair treatment of employees and employers. . .". Another purpose is to ". . . provide fair and efficient procedures for resolving disputes. . .". In my view, neither of these purposes can be achieved in absence of a clear set of reasons for a decision that either an employee is owed wages or is not owed wages by an employer. In addition, to ensure that the principles of natural justice are met, a person named in a Determination is entitled to know the decision resulting from an investigation and the basis for that decision. Without sufficient reasons, a person cannot assess the decision which includes

> knowing the case made against them or the case to be met if there is an appeal, and determining whether there are grounds for an appeal.

54. On the basis of the guidance offered in the Tribunal's decision in *Hilliard*, which is not inconsistent with the Supreme Court's decision in *R.E.M., supra*, calling for a functional approach to assessing the sufficiency of reasons in a legal proceeding, I find that the reasons provided by the delegate in the Determination were sufficient or adequate. That is, the reasons, read as a whole in context of all the evidence and submissions of the parties are sufficient to inform Qualified the basis on which the Director found Qualified to have contravened section 6.1 of the *Regulation* and they also allow Qualified to appreciate the case to be met if there is an appeal or in this case a reconsideration application. More specifically, in the Determination, the Director reviewed the uncontroverted evidence that the Offending Vehicle did not have a safety notice posted during the worksite visit; Shoker's evidence that all vehicles were checked in the morning by each driver; Shoker's evidence that somebody might have "ripped it off"; and the Team's finding that the other four vehicles of Qualified had a safety notice posted within them. The Director in the Determination refers to all this evidence before concluding that Qualified breached section 6.1 of the *Regulation*. After reaching this conclusion in the Determination, the Director goes on to state next "Shoker's statement that somebody might have 'ripped it off' is insufficient". I find that the Member incorrectly deduces from that statement that the Director's decision is based on the latter statement alone and therefore insufficient. While I believe that the Director could have better expressed or explained the basis of the Determination, I do not think that the reasons expressed in the Determination, read as a whole, in the context of all the evidence, are inadequate to fulfill their function, namely to inform Qualified the basis of the Determination and provide the latter an understanding of the case it has to meet on appeal.

ORDER

55. Pursuant to section 116 of the *Act* I am cancelling the Original Decision and confirming the Determination dated July 14, 2008.

Shafik Bhalloo
Member
Employment Standards Tribunal