

An Application for Reconsideration

- by -

Columbia Labour Contracting Ltd.  
("Columbia Labour")

- 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:** Kenneth Wm. Thornicroft

**FILE No.:** 2014A/160

**DATE OF DECISION:** December 23, 2014

## DECISION

### SUBMISSIONS

Kuldeep Singh Bhullar

on behalf of Columbia Labour Contracting Ltd.

### FACTS

1. On July 31, 2014 a delegate of the Director of Employment Standards (the “delegate”) issued a Determination pursuant to which Columbia Labour Contracting Ltd. (“Columbia Labour”) was assessed a \$10,000 monetary penalty under section 98 of the *Employment Standards Act* (the “*Act*”) and section 29 of the *Employment Standards Regulation* (the “*Regulation*”). The penalty was levied on the basis that Columbia Labour contravened subsection 6(1)(f) of the *Regulation* (addressing registration of vehicles operated by farm labour contractors) for the third time within a 3-year period.
2. The delegate appended “Reasons for the Determination” (the “delegate’s reasons”) to the Determination and in those reasons detailed that, in association with the provincial Commercial Vehicle Safety and Enforcement division and WorkSafe BC, the Employment Standards Branch’s Agricultural Compliance Team conducted a roadside vehicle check operation on June 25, 2014. This check resulted in a finding that Columbia Labour was utilizing a vehicle to transport 15 farm workers but that current vehicle licence and registration information for that vehicle had not been filed with the Employment Standards Branch contrary to subsection 6(1)(f) of the *Regulation*. Since the Director of Employment Standards had levied a second penalty against Columbia Labour on October 15, 2012, relating to a September 18, 2012, contravention of the same regulatory provision, the applicable penalty for this third contravention was \$10,000 as mandated by subsection 29(1)(c) of the *Regulation*.
3. On September 3, 2014, Columbia Labour filed an appeal of the Determination with the Tribunal asserting that the delegate erred in law and failed to observe the principles of natural justice in levying the \$10,000 penalty (see subsections 112(1)(a) and (b) of the *Act*). Columbia Labour maintained that it had attempted to fax the relevant information to the Branch but since its fax did not transmit, it mailed the information albeit to a former Branch office. The delegate noted in his reasons that the correct Branch contact information was noted on Columbia Labour’s farm labour contractor licence as well as on many other documents issued to Columbia Labour and that its principal, Mr. Bhullar (who represents the company in these proceedings), “has been to the Langley Branch [office] several times to drop off the documents and to get his licence...[and that] he is well aware of the Branch’s current address and contact information” (delegate’s reasons, page 5).
4. On November 5, 2014, Tribunal Member Roberts issued written reasons for decision summarily dismissing the appeal (BC EST # D100/14). Ms. Roberts concluded that the appeal had no reasonable prospect of succeeding. Her key findings (at paras. 22 – 24) are reproduced, below:

I am satisfied that the delegate communicated the Branch Team’s observations about the vehicle’s licence and registration number to Columbia and that Columbia was provided the opportunity to provide a response. As noted above, Mr. Bhullar submitted a letter to the delegate, explaining that he had sent the registration information to an incorrect fax number and an incorrect address. There is nothing to support Columbia’s ground of appeal [natural justice] on this basis. Columbia not only had an opportunity to respond, it did so. There is no evidence, or suggestion, that the delegate was partial.

Having reviewed the record, I find no error in the delegate’s findings that Columbia failed to comply with regulatory requirements to maintain licencing and registration information with the Branch. Although

Columbia offered a number of reasons for its failure to comply, I find no error in the delegate's decision to reject those reasons and impose an administrative penalty.

Employers have an obligation to structure their affairs in a way that complies with relevant legislation. The record shows that Columbia failed to do so. Once the delegate finds a contravention, there is no discretion as to whether an administrative penalty can be imposed or the amount of that penalty, since those amounts are prescribed by the *Regulation*.

## THE APPLICATION AND FINDINGS

5. Columbia Labour now applies, under section 116 of the *Act*, to have Tribunal Member Roberts' decision reconsidered. Columbia Labour's application consists of the Tribunal's "Reconsideration Application Form" (Form 2) to which is appended Member Roberts' decision and a 1-page letter dated December 3, 2014. This letter reiterates, almost verbatim, the arguments it advanced on appeal and, in conclusion, says: "We request the fine for \$10,000 to be reduced or waived. It is too much for our business to pay the fine. It is the matter for only one vehicle registration not been delivered to right address and on time to Employment Standard Branch." [*sic*]
6. The Tribunal has no authority to reduce the amount of the penalty – the amount is fixed by regulation. The penalty can only be cancelled if it was not lawfully issued. The facts in this case are clear – Columbia Labour failed to comply with its reporting obligations under the *Regulation* as a licenced farm labour contractor. As an aside, one has to wonder why, when faced with a \$10,000 potential penalty for a third contravention of the very same regulatory provision, Columbia Labour did not ensure that it scrupulously complied with its regulatory obligations. It failed to do so and it must now pay the price for its carelessness.
7. Reconsideration applications do not proceed as a matter of course. The Tribunal will only exercise its statutory discretion to reconsider a previous decision where there is a serious question about the correctness of that decision or where the appeal process was tainted by some sort of natural justice breach (see *Director of Employment Standards (Milan Holdings Inc.)*, BC EST # D313/98).
8. In this instance, there is no rational basis for concluding that Member Roberts' decision was incorrect. Indeed, it was, in my view, the only proper decision that could have been made in these circumstances. I entirely endorse Member Roberts' comments, reproduced above, relating to the merits of Columbia Labour's reasons for appeal.

## ORDER

9. Columbia Labour's application to have BC EST # D100/14 reconsidered is refused. Pursuant to subsection 116(1)(b) of the *Act*, the Determination is confirmed as issued in the amount of \$10,000.

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**Kenneth Wm. Thornicroft**  
**Member**  
**Employment Standards Tribunal**