

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Columbia Farm Contractor Ltd.
(“ Columbia ”)

- of a Determination issued by -

The Director of Employment Standards
(the “Director”)

ADJUDICATOR: C. L. Roberts

FILE No.: 2000/525

DATE OF DECISION: October 3, 2000

DECISION

This is a decision based on written submissions by Prithpal Ghuman on behalf of Columbia Farm Contractor Ltd., and J. V. Walton for the Director of Employment Standards.

OVERVIEW

This is an appeal by Columbia Farm Contractor Ltd. (“Columbia’s”), pursuant to Section 112 of the *Employment Standards Act* (“the *Act*”), against a Determination of the Director of Employment Standards (“the Director”) issued July 7, 2000. The Director found that Columbia contravened Section 6(1)(f) of the *Employment Standards Regulation* in failing to file with the Director an up-to-date list of the registration numbers and licence numbers of each vehicle used to transport employees, and Ordered that Columbia pay \$150.00 to the Director for the contravention, pursuant to Section 98 of the *Act* and 29 of the *Regulation*.

ISSUE TO BE DECIDED

Whether the Director erred in assessing a penalty for Columbia’s failure to comply with the *Regulation*.

FACTS

As set out by the Director’s delegate, the facts are as follows.

On July 4, 2000, the Agriculture Compliance Team conducted a site visit at JK Berry Farm on Clearbrook Road in Abbotsford. Columbia transported employees to this site to using a vehicle, the licence plate number of which was not registered with the Director of Employment Standards. The delegate determined that Columbia had contravened section 6(1)(f) of the *Regulation*.

Columbia has one previous Determination issued against it for contravening section 6(4) of the *Regulation* on July 1, 1998 for which it was assessed no penalty. That Determination was not appealed.

Because Columbia had a previous Determination in respect of the same contravention, the Director’s delegate determined a penalty of \$150.00. The delegate states that the penalty is assessed to emphasize the importance of compliance with the *Act* and the *Regulation*, and will apply escalating penalties to provide a financial incentive to do so.

ARGUMENT

Columbia says that the reason for transporting employees in a vehicle unregistered with the Director is that the registered vehicle had broken down and it had to make quick arrangements for alternate transportation. It used another vehicle which it was unable to register. Mr. Ghuman argues

that Columbia did not intend to transport employees in an unregistered vehicle, and although he knew the rules, he misunderstood them. He contends that he was not aware that the vehicle had to be registered immediately, before it was used in the business. He states that he is “new to the regulations because I just took over this business this year”.

Columbia seeks to have the Determination overturned.

In reply, the Director’s delegate notes that Columbia has been in the business of being a farm labour contractor for two years, as indicated on its farm labour application form completed in May, 2000.

Columbia provided the necessary information to register one vehicle as part of the licence application. That vehicle was a 1984 Dodge, with a licence plate number 7550CD. The Director received no other applications to register another vehicle.

The delegate states that on July 4, the Compliance Team visited JK Berry Farm where Columbia employees were picking raspberries. A vehicle with the licence plate number 7815ED was at the farm, and the employees indicated that they had used to drive themselves to the farm. No information regarding an emergency which required the use of another vehicle was given by the driver or the employees at the time.

The delegate states that the Compliance Team “uses vehicle registration information daily as a means of identifying farm labour contractors and to help identify employers who may be functioning as a farm labour contractor without a valid farm labour contractor licence” and argues that the information must be accurate and current.

The delegate argues that the penalty is appropriate in the circumstances.

ANALYSIS

Section 6(1)(f)(i) of the *Regulation* provides that a farm labour contractor must file with the director an up-to-date list of the registration numbers and licence numbers of each vehicle used by the farm labour contractor for transporting employees.

Section 98 of the *Act* provides that if the director is satisfied that a person has contravened a requirement of the *Act* or the *Regulation*, the director may impose a penalty on the person in accordance with the prescribed schedule of penalties. Section 29 of the *Regulation* prescribes those penalties for contravention of section 6.

The *Act* places the burden of maintaining records and providing them to the Director on the employer.

Mr. Ghuman does not dispute the fact that Section 6 (1)(f)(i) was contravened, but argues that he ought not have a penalty determination issued against him because firstly, he had vehicle problems, and secondly, because he misunderstood the *Regulation*.

The burden of establishing that a Determination is in error rests with an appellant.

Columbia provided no evidence in support of its ground of appeal. If the vehicle was indeed not operating, I would expect some evidence from a vehicle repair shop or other third party corroborating that statement. Further, I would expect the workers to have some knowledge of the reason that they were using a vehicle they had not used before. None of this information was communicated to the Compliance Team members.

Mr. Ghuman further argues that he is new to the business having just taken over the business this year. The evidence is that Columbia's application for Farm Labour Contractor Licence, which was received by the Employment Standards Branch in May, 2000, indicates that Mr. Ghuman has been in operation as a farm labour contractor since 1998. Either the information on the application is false, or Mr. Ghuman is attempting to mislead the Tribunal. In either case, I am not persuaded, on a balance of probabilities, that Mr. Ghuman was unaware of the requirements of a contractor under the *Regulation*.

The purposes of the *Act* are set out in section 2. They 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* and the *Regulation* are interpreted. The obligations imposed on farm labour contractors are also intended to protect employees. The penalty provisions are, as the delegate notes, designed to provide a financial incentive to comply with the requirements. Columbia has had one Determination issued against it previously. I find no basis to allow the appeal.

ORDER

I Order, pursuant to Section 115 of the *Act*, that the Determination dated July 7, 2000 be confirmed in the amount of \$150.00, together with whatever further interest that may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

C. L. Roberts

C. L. Roberts
Adjudicator
Employment Standards Tribunal