

**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 -

Max Boudreau  
(" Boudreau ")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** James Wolfgang

**FILE No:** 2000/027

**DATE OF DECISION:** March 23, 2000

**DECISION**

**OVERVIEW**

This is an appeal by Max Boudreau (“Boudreau”) pursuant to Section 112 of the *Employment Standards Act (the “Act”)* from a Determination issued by the Director of Employment Standards on December 24, 1999. The Determination found Super Shuttle Ltd., Local Minibus Ltd., Cheam Tours Ltd., Airport Super Shuttle Ltd., Newton Whalley Hi Way Taxi Ltd., Johal Bros. Holdings Ltd., SDM Transport Ltd., Taxi Bus Ltd., and Coquitlam Cabs Ltd. had violated Section 95 of the *Act* and ordered Super Shuttle Ltd. (“Super Shuttle”) and the associated companies to pay Reid J. Gillis (“Gillis”), Max Boudreau (“Boudreau”), Parminder Dhaliwal (“Dhaliwal”), William E. ‘Bill’ Jones (“Jones”), ‘James A ‘Jim’ Morgan (“Morgan”), and Gunter Schlieper (“Schlieper”) wages and interest in the amount of \$13,249.00. A penalty of \$0.00 was also assessed.

The issue for Boudreau is the rate of pay established for him in the Determination. The Determination awarded him a rate of \$8.50 per hour. He claims he was hired at the rate of \$10.00 per hour.

**ISSUE TO BE DECIDED**

Is Boudreau entitled to the rate of pay he claims?

**FACTS**

Boudreau was hired by Schlieper, Super Shuttle’s office manager, as a part time dispatcher, front office worker and customer service representative for Super Shuttle Ltd (Super Shuttle), Local Minibus Ltd. and Super Shuttle operated by Cheam Tours. Boudreau claims they agreed he would be paid \$10.00 per hour and signed an employee form provided by Schlieper to this effect. He did not keep a copy of the document. He claimed he reported directly to Schlieper but had dealings with Jasbinder Siekham (“Siekham”) and Amarjit Johal (“Johal”) whom he understood owned Super Shuttle.

Boudreau received his first and only cheque after leaving Super Shuttle. He became concerned when, by his calculation, it appeared the company paid him what worked out to be \$7.00 per hour.

The cheque dated April 9, 1999 from Super Shuttle was in the amount of \$623.00 and was returned by the bank for insufficient funds. Shortly after Boudreau filed his complaint.

Boudreau was employed from March 13 to March 28, 1999 and claimed to have worked 89 hours during that period. He anticipated a wage statement showing his gross earnings, the amount deducted for income tax, CPP, EI, and a minimum amount of \$890.00 that reflected all hours worked at a straight time rate of \$10.00 per hour. He also expected vacation pay on that amount.

He received neither a wage statement nor a Record of Employment. He believes no money was remitted to Revenue Canada and therefore that balance is owed to him in the amount of \$302.60.

Boudreau received a money order from Johal sent by Super Shuttle dated June 6, 1999 in the amount of \$623.00. This was to replace the NSF cheque. He did not consider it as final payment, but simply the net amount he was due. A copy of the money order is on file. The money order indicated it was a "Check replacement. Final Settlement." (the underlining was on the money order)

Siekham confirmed to the delegate that Boudreau worked for him at Super Shuttle. He also acknowledged Boudreau was still owed unpaid wages and believes if any deductions were made to Revenue Canada Johal would have the records.

The delegate issued a Demand for Employee Records on June 18, 1999. This demand was sent to Super Shuttle and/or Local Minibus Ltd. There was no response to that demand. There was no response from Siekham to the messages from the delegate to arrange meetings. A \$500.00 penalty determination was issued on October 26, 1999 against Local Minibus and Super Shuttle for failure to produce records as required. The penalty was not paid. The delegate spoke to Johal by telephone on October 22, 1999. Johal claimed he resigned as director of both Super Shuttle and Minibus at the end of June 1999 after paying Boudreau off. He admitted that there were unpaid wages owed but believes that is Siekham's problem.

As Super Shuttle did not reply to the demand for employee records Boudreau supplied the delegate with a hand printed list of the hours he claimed to have worked, which were used, by the delegate in his calculation. The employer did not supply any record regarding Boudreau's rate of pay and Schlieper could not recall what arrangement he made with Boudreau when he hired him. Schlieper does admit Boudreau signed an employee form. He does not have a copy of it but stated Siekham would have a copy. Schlieper maintains drivers start at \$8.50 per hour and Boudreau's wages would have been higher.

The delegate has done an extensive and comprehensive investigation of the connections between the listed companies.

Section 95 of the *Act* states:

If the director considers that businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination of them under common control or direction,

- (a) the director may treat the corporations, individual, firms, syndicates or associations, or any combination of them, as one person for the purposes of this Act, and
- (b) if so, they are jointly and separately liable for payment of the amount stated in a determination or in an order of the tribunal, and

this Act applies to the recovery of that amount from any or all of them.

The Determination sought to answer four questions, which must be addressed if the Director of Employment Standards is to treat several entities as one person in order to collect outstanding wages. Those questions are:

What is the business, trade, or undertaking?

Is the business operated by or through more than one corporation, individual, firm, syndicate, or association or any combination of them?

Are the entities to be associated under common control or direction?

Is there an employment standards purpose for associating the entities as one person?

The delegate undertook a thorough investigation of these four questions and they are spelled out in considerable detail in the Determination. The result of that investigation established:

“from all available evidence that these corporations operate a transportation business through a number of corporate entities who are functionally and practically one business”.

The Determination found there was an employment standards purpose for associating the entities as one person. At page 6 the Determination states:

The purpose, in this instance, is that the Section 87 lien may be attached to all available assets. The creation of multiple corporate and business entities to operate one employer should not deprive the Director of the ability to access assets to satisfy amounts owing under a determination. When an employer operates a business or undertaking through several corporations, a corporate association is necessary and proper.

The issue of common control and direction of the employees has been presented by the delegate. No evidence has been received to challenge that finding. Further, the Tribunal has not received any additional information from Siekham to this date.

The Determination ordered Super Shuttle pay Boudreau \$853.06 less the amount he had received. The delegate calculated Boudreau was owed an additional amount of \$230.06 plus interest of \$10.83 for a total of \$240.89.

## **ANALYSIS**

I am satisfied the delegate has established the necessary connection between the companies, and particularly between Johal and Siekham at the relevant times. Both Johal and Siekham have

admitted at different times that wages are owed to the former employees, but neither accepts responsibility.

When Super Shuttle appealed the Determination they made no reference to the rate of pay for Boudreau. The appeal letter by Siekham on behalf of Super Shuttle stated further information would be sent on the cases but makes no specific reference to Boudreau.

I accept the finding of the delegate on the number of hours worked by Boudreau to be 89. The fact Super Shuttle paid him \$623.00 which, when divided by \$7.00, equals 89 supports that finding.

When Boudreau filed his Complaint and Information form he indicated his rate of pay was \$10.00 per hour. Boudreau further claimed he signed an employee form when hired which showed his rate at \$10.00 per hour. Schlieper's evidence supported the claim there was an employee form signed by Boudreau. His further evidence was that the drivers started at \$8.50 per hour and the rate for Boudreau would have been higher and could have been the \$10.00 claimed.

When Boudreau filed his complaint he was unaware Super Shuttle were not going to provide payroll records, including his employee form. If produced, that form would have clearly established the rate of pay Boudreau was to receive. If Boudreau were not telling the truth about his hiring rate it would have been evident at that time.

On the basis of probabilities, I am inclined to accept the appeal by Boudreau and establish his rate at \$10.00 per hour. This matter is referred back to the Branch for recalculation of the amount owed to Boudreau.

**ORDER**

In accordance with Section 115 of the *Act* I order the Determination dated December 24, 1999 be amended to establish the rate of pay for Boudreau at \$10.00 per hour plus vacation pay. The matter is referred back to the Branch for the calculation of the proper amount owed. Interest is to be calculated in accordance with Section 88 of the *Act*.

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**James Wolfgang**  
**Adjudicator**  
**Employment Standards Tribunal**