

**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 -

Super Shuttle Inc.  
(" Super Shuttle ")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** James Wolfgang

**FILE No.:** 2000/029

**DATE OF DECISION:** March 21, 2000

**DECISION**

**OVERVIEW**

This is an appeal by Jasbinder Siekham (“Siekham”) of Super Shuttle and Associated Companies 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 several Sections 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 Determination found Super Shuttle and Associated Companies had contravened Parts 3, 4, 5 and 7, Sections 16, 17(1), 18(2), 21(1), 21(2), 27(1), 28, 32(1), 32(2), 34(2), 40(1), 45, 46(1), 36(2) and 58(1) of the *Act*.

On October 26, 1999, a \$500.00 penalty was assessed against Local Minibus Ltd. and/or Super Shuttle Ltd. for failure to produce records demanded by the first delegate working on the case. The penalty has not been paid and the second delegate has not heard from the employer regarding the Demand or the penalty determination.

**ISSUE TO BE DECIDED**

Are Gillis, Boudreau, Dhaliwal, Jones, Morgan and Schlieper owed money for wages, statutory holiday pay, vacation pay and interest as awarded in the Determination.

**FACTS**

Gillis was a driver for Super Shuttle from July 28, 1998 to November 12, 1998. He was paid an hourly rate of \$8.50.

Boudreau was a part-time dispatcher, front office worker and customer service representative for Super Shuttle Ltd., Local Minibus Ltd., and Super Shuttle operated by Cheam Tours. He was employed from March 13, 1999 to March 28, 1999. His rate of pay is in dispute.

Dhaliwal worked in Super Shuttle’s office as a dispatcher and took reservations. She worked from April 12, 1999 to July 2, 1999. Her rate of pay was \$1000.00 per month.

Jones worked for Super Shuttle as a commissioned driver from July 19, 1998 and is currently employed by Airport Super Shuttle. He was to receive 65% of the gross intake from the vehicle he drove.

Morgan drove a minibus with a sign "Super Shuttle operated by Cheam Tours" marked on the side. Morgan was paid as a commissioned driver.

Schlieper worked as the office manager and primary dispatcher for Super Shuttle Ltd., Super Shuttle operated by Cheam Tours, and/or Local Minibus Ltd. He worked from July 15, 1998 to April 9, 1999. His rate of pay was \$2,000.00 per month.

It is not necessary to elaborate on the claims of Gillis, Boudreau, Dhaliwal, Jones, Morgan and Schlieper as they are spelled out in detail in the Determination.

There was a Demand for Employer Records issued April 1, 1999 to Super Shuttle for Gillis. Some records showing daily hours for Gillis were received by fax from Super Shuttle May 1, 1999. No wage statements, cancelled cheques, or documentation of money remitted to Revenue Canada were provided.

Another Demand for Employer Records was sent to Super Shuttle and/or Local Minibus Ltd. June 18, 1999 for employment records of all former and current employees. No response was received to this demand.

The delegate contacted Siekham by telephone October 12, 1999 to learn the position of Super Shuttle. He offered to meet with the delegate at an unspecified date in the future. Siekham has not responded to any messages left by the delegate and has made no arrangements to meet.

Siekham stated during the interview Schlieper was owed a maximum of \$2,000.00 and denied he was an employee of Super Shuttle. He had no copy of their contract. He further stated Jones worked strictly for Cheam Tours and Airport Super Shuttle even though he operated under a Super Shuttle license. Siekham claimed Cheam Tours and Airport Super Shuttle are distinct companies owned by Johal and his colleagues.

Siekham confirmed that Gillis and Boudreau worked for him at Super Shuttle and acknowledged they were probably still owed something.

On October 22, 1999 the delegate interviewed Johal by telephone. Johal claimed he resigned as director of both Super Shuttle and Local Minibus the end of June 1999. He indicated he does not doubt the complainants are owed unpaid wages however he believes it is Siekham's problem.

On October 26, 1999 a penalty of \$500.00 was assessed against Local Minibus Ltd. and/or Super Shuttle for failure to produce employee records. The employer has not responded to either the Demand or the penalty.

In a fax dated November 22, 1999 Johal stated Morgan did not work for Cheam Tours December 1, 1998 until March 19, 1999 but worked for Super Shuttle. He acknowledged that Morgan worked for Airport Super Shuttle from June 15, 1997 until November 30, 1998 and was paid in full for that time. He provided a copy of Morgan's Record of Employment to verify that position.

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:

1. What is the business, trade, or undertaking?
2. Is the business operated by or through more than one corporation, individual, firm, syndicate, or association or any combination of them?
3. Are the entities to be associated under common control or direction?
4. 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 Determination found Gillis should have received \$1,054.82 for unpaid wages plus interest of \$76.92 for a total of \$1,131.74.

Boudreau was awarded \$230.06 in unpaid wages plus interest of \$10.83 for a total of \$240.89. That amount has been appealed by Boudreau and is the subject of another decision.

Jones was awarded \$1,990.20 in unpaid wages plus interest of \$87.98 for a total of \$2,078.18.

Schlieper was found to be a manager and not a consultant or contractor. As a manager, he was not entitled to overtime. There were no records of the amount of extra time Schlieper worked and the Determination does not award any money for those hours. Schlieper was awarded \$5,552.09 in unpaid wages plus interest of \$249.39 for a total of \$5,801.48.

Dhaliwal was awarded \$2,420.51 in unpaid wages plus interest of \$72.53 for a total of \$2493.04. Dhaliwal was awarded minimum wage as her salary and hours of work were below the minimum.

Morgan was awarded \$1,433.78 in unpaid wages plus interest in the amount of \$69.89 for a total of \$1,503.67. Morgan was awarded minimum wage as the commission he was being paid failed to meet the minimum for the hours worked.

Siekham appealed the Determination by letter, dated January 17, 2000, which stated:

My reasons for appeal are that there is an error in law and in the findings of facts.  
Mr. Gunter worked as a consultant on his own (h)ours (sic).  
Whenever and however he wanted to.  
When these people are put in front of Tribunal (sic) and questioned the relevant facts will become clear.  
Further information will be send (sic) on the cases.  
(underlining added)

The Tribunal has not received any additional information from Siekham to this date.

There was a letter submitted to the Tribunal by Gunter Schlieper denying he had been employed as a consultant and explaining his relationship with Super Shuttle.

There has been an appeal of the Determination by Boudreau to the Tribunal, claiming the hourly rate awarded to him is incorrect.

## **ANALYSIS**

There has been a total lack of co-operation by Super Shuttle and Siekham with the Branch. The failure to supply the necessary information or records has prolonged and impeded the investigation.

The Tribunal has received no evidence from Super Shuttle to challenge the findings of the Determination therefore the appeal is limited to dealing with the evidence already before us. The appellant has an obligation to present evidence and argument to show the Determination was wrong and identify what changes are necessary. Super Shuttle has failed to do so and the majority of the Determination is confirmed.

The issue of common control and direction of the employees has been proven. No evidence has been received to challenge that finding. 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.

I believe there is an error in the calculation of the amount owed to Dhaliwal. In the calculation of the money received by Dhaliwal from Super Shuttle two amounts are shown, one cheque for \$1,000.00 and a second cheque in the amount of \$800.00 for a total of \$1,800.00. At page 18 of the Determination the delegate indicates Dhaliwal received \$1,800.00 however in the Overtime Calculation Report at page 4 the delegate indicates "Less wages paid by employer: 1,000.00" for a total of wages owing of \$2,420.51. I believe that amount should be \$1,620.51 plus interest. The matter of the amount owed Dhaliwal is referred back to the Branch for investigation and possible correction.

## **ORDER**

In accordance with Section 115 of the *Act* I order the Determination dated December 24, 1999 be confirmed except where amended and is referred back to the Branch for the calculation of the proper amount owed to Dhaliwal. Interest is to be calculated in accordance with Section 88 of the *Act*.

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