

**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 Ltd. and Local Minibus Ltd. and Cheam Tours Ltd. and  
Airport Super Shuttle Ltd. and Newton Whalley Hi Way Taxi Ltd. and  
Johal Bros. Holdings Ltd. and SDM Transport Ltd. and  
Taxi Bus Ltd. and Coquitlam Cabs Ltd.

(the "companies")

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

**ADJUDICATOR:** David B. Stevenson

**FILE No.:** 2000/131

**DATE OF DECISION:** June 6, 2000

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Newton Whalley Hi Way Taxi Ltd. (“Newton Whalley”) of a Determination that was issued on December 24, 1999 by a delegate of the Director of Employment Standards (the “Director”). The Determination addressed several complaints that had been filed against Super Shuttle Ltd. and other companies associated with Super Shuttle Ltd., for wages alleged to be owing to the complainants. In making the Determination, the Director concluded, under Section 95, that several companies, Super Shuttle Ltd. and Local Minibus Ltd. and Cheam Tours Ltd. and Airport Super Shuttle Ltd. and Newton Whalley Hi Way Taxi Ltd. and Johal Bros. Holdings Ltd. and SDM Transport Ltd. and Taxi Bus Ltd. and Coquitlam Cabs Ltd., should be treated as one employer for the purposes of the *Act*.

Newton Whalley challenges that conclusion in its appeal.

The length of time that has passed between the issuing of the Determination and the filing of this appeal raises a concern that this appeal has not been filed within the time limits set out in the *Act*. If so, the Tribunal must consider whether to exercise our discretion under Section 109(1)(b) of the *Act* to allow this appeal to proceed on its merits.

### ISSUES TO BE DECIDED

The issues to be decided in this decision is whether the appeal has been filed within the time limits set out in the *Act*, and if not, whether the Tribunal should exercise its discretion to extend the time limit for filing this appeal.

### FACTS

The Determination was issued on December 24, 1999 and was sent by registered mail to a number of persons, including Narinder Johal and Manjinder Johal. At the time the Determination was issued, a Corporate Registry search done by the Director on December 22, 1999 indicated that both individuals were listed as Directors and Officers of Newton Whalley. On its face, the Registry’s information was based on an Annual Report dated October 7, 1998. The Corporate Registry search also showed the registered and records office of the company and listed other directors/officers. The Determination was not sent to the registered and records office of the company nor to any other director or officer listed in the Corporate Registry search results.

On January 25, 2000, the Director caused another search of the Corporate Registry to be done. The Registry’s information as at this date was based on an Annual Report dated October 7, 1999. This search revealed that only one of the above individuals, Narinder Johal, continued to be listed as a Director of Newton Whalley.

The appeal was received by the Tribunal on March 1, 2000. It indicated that Newton Whalley had only become aware of the Determination on February 28, 2000, when the Director took enforcement proceeding against the bank account of that company. The appeal was filed on behalf of the company by Baljit Kalkat, who is identified as the Corporate Secretary of Newton Whalley. The appeal submission asserts that neither Manjinder Johal nor Narinder Johal were officers or directors of Newton Whalley on December 22, 1999, the date the Determination was sent to them by the Director, Manjinder Johal having resigned as a Director/Officer on September 11<sup>th</sup>, 1999 and Narinder Johal having resigned as a Director on December 3<sup>rd</sup>, 1999.

## ANALYSIS

Section 81(1) of the *Act* requires the Director to serve a copy of a Determination on any person named in it. Section 122 of the *Act* sets out how service of a Determination may be effected:

122. (1) *A determination or demand that is required to be served on a person under this Act is deemed to have been served if*
- (a) *served on the person, or*
  - (b) *sent by registered mail to the person's last known address.*
- (2) *If service is by registered mail, the determination or demand is deemed to be served 8 days after the determination or demand is deposited in a Canada Post Office.*
- (3) *At the request of a person on whom a determination or demand is required to be served, the determination or demand may be transmitted to the person electronically or by fax machine.*
- (4) *A determination or demand transmitted under subsection (3) is deemed to have been served when the director receives an acknowledgment of transmission from the person served.*

In this appeal, Newton Whalley says that the individuals on whom the Determination was served were neither officers nor directors at the time it was served and Newton Whalley was not made aware, either by those individuals or by the Director in any correspondence directed to their registered, records or business address or to any other director or officer, that a Determination had been issued in which they were named. They have filed a copy of the resignation of Manjinder Johal as a director and officer of Newton Whalley, dated September 11, 1999 and a copy of the resignation of Narinder Johal as a director of Newton Whalley, dated December 3, 1999, in support of this assertion with their appeal submissions. There is no allegation that the resignations have been fabricated or are otherwise not legitimate.

The appeal was filed with the Tribunal within two days of when Newton Whalley says it first became aware of the Determination.

The Director submits that the individuals on whom the Determination was served were shown in the Corporate Registry as Directors and/or Officers as of December 22, 1999. That submission

does not accord with the information provided by Newton Whalley showing that both individuals had tendered resignations as directors and officers prior to December 22. The Director also suggests that there should be an inference drawn that Narinder Johal was a director of the company on December 22 because the search done on January 25, 2000 listed him as a director of the company. The difficulty with that suggestion is that the information listed in the January 22 search appears to be based on an annual report filed October 7, 1999, while his resignation is dated December 3, 1999.

None of the above would matter if either of the two individuals were “ *a person named in the determination*”. However, they are not named in it. The Determination is made against the company, not against the individuals or the directors/officers. Accordingly, the company is the person the *Act* requires be served with the Determination. While the Tribunal has accepted that service of a Determination or a demand on a company can be effected by service on a director, officer or agent of the company, as well as by delivering the Determination or demand to the registered and/or records office of the company, such service, as the events here attest, can be problematic where the persons served are presumed to be directors, officers or agents of the company, but in fact are not. In retrospect, the better course would have been to serve a copy of the Determination on the registered and records office of the Newton Whalley rather than rely on the incorrect presumption that the individuals were directors and/or officers of Newton Whalley.

The statutory responsibility for effecting service is on the Director. The responsibility to prove service also belongs to the Director. There is no proof that service of the Determination has been made on Newton Whalley. In the circumstances, service of the Determination on Narinder Johal and Manjinder Johal does not satisfy the requirements of the *Act* for service and, as a result, no issue under Section 109(1)(b) arises. The appeal will be considered on its merits. The Tribunal will contact the parties for further submissions on the substantive issue raised in the appeal.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**