

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.: 2000/218

DATE OF DECISION: June 6, 2000

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Johal Bros. Holdings Ltd. and Cheam Tours Ltd. (“Johal Bros. and Cheam” or “the companies”) 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*.

Johal Bros. and Cheam challenge the Determination on the ground that the companies were not given notice that the Director was considering associating the companies with Super Shuttle Ltd. and were not given an opportunity to respond to allegations made against them. They also challenge the correctness of the decision to associate the companies with Super Shuttle Ltd. for the purposes of the *Act*. Both appeals were filed by Amarjit Johal, a director and officer of both companies.

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 Johal Bros., Cheam, Amarjit Johal, Narinder Johal and Manjinder Johal. As it relates to Johal Bros. and Cheam, the Determination was sent by registered mail to their respective registered and records office. Based on material provided by the Director in her submission filed in response to the appeal, I am satisfied that Johal Bros. and Cheam were properly served with the Determination.

Under Section 112(2) of the *Act*, Johal Bros. and Cheam were required to deliver their appeal to the Tribunal with 15 days after the date of service by registered mail. The time limited for filing an appeal would have expired on January 18, 2000 at the latest. These appeals were not delivered to the Tribunal until March 28, 2000.

ANALYSIS

The Tribunal has a discretion under section 109(1)(b) to extend the time limits for requesting an appeal.

In *Christopher Rasmussen*, BC EST #D341/99, the Tribunal noted that its discretion to extend the time limited for requesting an appeal is granted only on rare occasions and outlined the matters it would consider when exercising that discretion:

. . . to obtain an extension of these time limits, an appellant is required to prove that; (1) there is a reasonable and credible explanation for the failure to file within the time period; (2) there has been a genuine and ongoing bona fide intention to appeal the determination; (3) the respondent party and the director have been made aware of that intention; (4) the respondent party will not be prejudiced by the granting of an extension; (5) there is a strong prima facie case in favour of the appellant.

There is an obligation on the party wishing to appeal a Determination to exercise due diligence in pursuit of that appeal.

The only explanation given by both Johal Bros. and Cheam for failing to file the appeal within the time limits is contained in the following sentence:

The Appellant files this appeal late because it was not aware that a determination had been made against it.

I do not accept the explanation given for the companies to be either reasonable or credible. Both appeals challenge the correctness of the decision of the Director to associate the companies with Super Shuttle Ltd. On any reasonable analysis, it is clear that the Determination was associating Johal Bros. and Cheam with Super Shuttle Ltd. for the purpose of ensuring the complainants received the wages owed to them. As well, the companies are both named in three locations at the beginning of the Determination. Finally, a copy of the Determination was served on both companies and delivered by registered mail to Amarjit Johal as a director of Cheam and a director and officer of Johal Bros. He was the only director or officer of Cheam served with the Determination. If there was any intention at all by either of the companies to appeal any liability to the complainants, it is very surprising that some steps were not taken to clarify the scope of the Determination. There is, however, no indication in the appeal or in any of the material on the file that any confusion was expressed by any representative of the companies to anyone about the impact of the Determination on them.

The delay here was significant. I can see no indication that the companies exercised the diligence required of a person pursuing an appeal under the *Act*. The submission filed with the appeal form was dated March 10, 2000. The appeal form was dated March 17, 2000. The appeal was not delivered to the Tribunal until March 28, 2000. Even if the companies were unaware until March 10, 2000 that a Determination had been made against them, the request for appeal was not delivered until 18 days after that date - more than three days longer than allowed under Section 112(2).

I am not inclined, in the circumstances, to give the companies an extension of the time limit in Section 112(2) of the *Act* for requesting an appeal of the Determination.

ORDER

Pursuant to Section 114(1)(a) of the *Act*, the appeals are dismissed.

David B. Stevenson
Adjudicator
Employment Standards Tribunal