

An appeal

- by -

Skeena Valley Guru Nanak Brotherhood Society

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

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

ADJUDICATOR: John M. Orr

FILE No.: 2001/298

DATE OF DECISION: July 3, 2001



DECISION

OVERVIEW

This is an appeal by Skeena Valley Guru Nanak Brotherhood Society (“the Society”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) from a Determination (File No.094-884) dated March 22, 2001 by the Director of Employment Standards (the “Director”).

The Tribunal decided that it was fair and reasonable in this case that the appeal be heard by way of written submissions.

Swaran Singh (“Swaran”) worked as a Giani, “learned one”, for the Society from July 1996 to October 1998. After he failed to return from a trip to India on the date he had promised, he was not welcomed back to the temple. He made a claim to the Employment Standards Branch for compensation for length of service and for unpaid wages.

On April 30, 1999 a Determination was issued that found that Swaran was owed certain wages. The Society appealed that Determination and the Tribunal agreed with the Society’s contention that “free room and board” should have been credited as wages. A further issue was raised that Swaren received extra payments from members of the congregation for services provided. These payments were referred to in previous decisions as “offerings”.

The Director sought a reconsideration of the Tribunal's decision and the Reconsideration panel concluded that “free room and board” should not have been considered “wages”. However, the Reconsideration panel decided that there was insufficient evidence upon which to decide the nature of the payments made to Swaren directly or indirectly from members of the congregation. The previous determinations and adjudications were cancelled and the file was referred back to the Director for further investigation and for a new determination if appropriate.

On March 22 2001 a delegate of the Director issued a new determination in which it was concluded that:

1. Swaren was an employee of the Society;
2. Swaren worked for 8 hours on Sundays and an average of four hours per other day;
3. Free room and board should not be considered wages;
4. Money paid to Swaren directly or indirectly by members of the congregation was not wages and should not be credited against wages owing. They were gratuities.
5. Swaren was entitled to wages in the amount of \$12, 466.00



6. Swaren was dismissed for just cause and was not entitled compensation for length of service.

The Society has once again appealed the Determination. The Society disputes the number of hours of work has calculated by the Director's delegate and they once again raise the issue that credit should be given for the "free room and board". The Society also disputes the notion that the fees for specific services performed by the Giani should be considered gratuities. However, more significantly the Society alleges that the nature of the relationship between the Society and the Giani has been misunderstood from the beginning and is not a "master-servant" relationship and is not "employment".

ISSUES

1. Was the Giani an employee? and if so
2. What hours were worked?
3. Should credit be given for "free room and board"?
4. Were the fees for special services gratuities?

ANALYSIS

I have reviewed the determination carefully, the history of this matter, the various arguments made by the Society and the written submissions made on this appeal and I am satisfied that there has been a fundamental misunderstanding of the nature of the relationship between the Society and the Giani that has led to significant difficulties in assessing such things as hours of work and forms of payment.

In my opinion it must be recognized that there are people who labour without thought of reward in any monetary sense. I use the term "labour" instead of "work" because "work" is defined in the *Act* as labour or services an employee performs for an employer. However there are many people who provide labour or services who are not employees and do not do those services for an "employer". Consider for example the vast network of dedicated volunteers in our society who perform labour and services in all manner of contexts and for all manner of people. There is also a history in our society and in many other societies and cultures of holy men and women who have dedicated their lives to the service of their followers, their congregations, and humanity without thought of their daily bread or temporal reward. We may consider John the Baptist, Jesus of Nazareth, Lord Buddha, Mother Theresa to name only a few, along with the hundreds of thousands of monks, nuns and "elders" who have served humanity for centuries up to the present time.

The definitions of employer and employee in the *Act* are not helpful because they are tautological in nature. In other words they are circular and do not assist in identifying those people who should be considered employees and those who labour and are not employees.



In this case the Society points-out that Swaren Singh was an invited visitor to Canada with specific restrictions on his entry permit that he not be “employed” anywhere in Canada. He was invited to join the congregation of Skeena Valley as a Giani where he would read and recite hymns and perform holy ceremonies for the members. There was little expectation of reward except that in the Sikh religion it was established custom for the Society to honour such services with room and board together with some cash gifts (honoraria). Members would also donate gifts of food and clothing and cash. It was a matter of respect and honour and not a matter that was intended to be legally enforceable.

As the representative for the Society states – a Giani is an honorary position and is not one of master/servant. The relationship is one of volunteerism matched with respect and a mutual moral obligation to provide for the needs of the Giani. It is a symbiotic relationship. It would not be culturally acceptable to ask for payment for room and board from a Giani nor would it be culturally acceptable for the Giani to demand such room and board. It is an honour system rooted in culture and tradition. It is not intended to be enforceable at law. In my opinion it would be fundamentally wrong to impose a legal obligation upon a relationship where none was intended.

As I re-read all of the submissions and arguments in this file and all of the previous files in relation to this matter, it became clear to me that the Society had advanced the position from the beginning that Swaren Singh was considered such a holy man or “learned one”- a Giani. He simply did not fit into the notion of employer/employee as contemplated by the *Act*. The Society tried to answer the questions of the Director’s delegate in terms of the *Act* and simply could not find that a Giani fit into any of the categories contemplated by the legislation. The delegate correctly points out that the Society’s position changed from time to time as they tried to find a place within the legislation that suited the actual nature of the labour and services provided by a Giani. The delegate was not in error in rejecting most of these constructed arguments.

The articulation of the concept that a Giani did not fit into any category of employment was difficult to follow especially in the earlier submissions, which attempted to use the language of the legislation to rationalise the relationship. The most recent articulations have finally shed light on the situation by acknowledging the uniqueness of the Giani that is founded in cultural and religious traditions not contemplated by the *Act*.

In my opinion, on reviewing all of the evidence and submissions, the labour and services performed by the Giani was not “work” as defined by the *Act*. The labour and services were not performed by an employee for an employer. In my opinion the Giani was not entitled to “wages” as he was not an employee and did not perform “work”. In my opinion the Giani was not an “employee” because he was not receiving or entitled to “wages” for work.

I am satisfied that the Society has met the burden of persuading me on the balance of probabilities that the position of Giani was not a master/servant relationship and was not an employee/employer relationship.



It may be that, within the moral, cultural and religious traditions of the Sikh community, there is a debt of honour owed to Swaren Singh but I am satisfied that there is no enforceable legal remedy under the Employment Standards legislation. As a result of this conclusion it is not necessary to address the hours worked, the free room and board, or the issue about the offerings. I conclude that the Determination should be cancelled.

ORDER

I order, under Section 115 of the *Act*, that the determination is cancelled.

John M. Orr
Adjudicator
Employment Standards Tribunal