

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. (Newton Whalley Appeal)
(" the companies ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: David B. Stevenson

FILE No.: 2000/398

DATE OF DECISION: September 11, 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, to the extent it affects them, in this appeal.

ISSUE

The issue is whether Newton Whalley has shown the decision to treat them as one employer with the other companies was wrong.

ARGUMENT

Newton Whalley filed this appeal with the Tribunal on March 1, 2000. In the appeal, they gave the following reasons:

1. Error in finding of facts:
 - a. The people who are complaining never worked for Newton Whalley Hi-Way Taxi Ltd. at any given time except William Jones who was a Manager here and does not have any claim against that as such.
 - b. As per your determination page number **four** where it is mentioned that:

“Amarjit Johal wrote a letter dated June 29th 1999 to CN railway transportation that letter was to advise CN railway that he was assigning Cheam Tours CN contract to Newton Whalley Hi-Way Taxi Ltd.”

As a matter of fact Newton Whalley Hi-Way Taxi Ltd. is not aware of such arrangement and as per our knowledge Cheam Tours still have that contract with them.

- c. On page number six paragraph two which states:

“Manjinder Johal and Narinder Johal are listed as directors of both Johal Bros. Holdings Ltd. and Newton Whalley Hi-Way Taxi Ltd. The evidence indicates Amarjit Johal is also involved in the operations of Newton Whalley Hi-Way Taxi Ltd.”

1. Maninder Johal resigned from the directorship of this company on September 11th 1999 and as of date he is not even a shareholder of this company.
2. Narinder Johal was laid off from Newton Whalley Hi-Way Taxi Ltd. on Nov. 30th 1999 (Photocopy of Record of Employment enclosed) and the same day he resigned from the directorship of this company. As of date he is also not a shareholder of this company.
3. Amarjit Johal is not at all involved in the operations of this company in any respect whatsoever.
4. Johal Bros. Holdings Ltd. has no connection with this company and in fact this is a shareholding company owned by 31 shareholders as per list attached.
5. Airport Super Shuttle Service Ltd. owns only two voting shares out of total in our company as per our current list of shareholders.

The above represents the extent of the appeal on the merits. On June 24, 2000, Newton Whalley supplemented this appeal with an additional submission (the “supplementary submission”). That submission substantially restates the above points, adding the assertion that there was no evidence that Newton Whalley Hi-Way Taxi Ltd. carried on any business or was involved in any way in the operation of the business carried on by Super Shuttle Ltd or Local Minibus Ltd. That assertion does little more than restate the issue in dispute.

In reply to the appeal, the Director noted that there have been two other appeals to the Tribunal of the Determination and in both decisions the Tribunal commented that “. . . the delegate has established the necessary connection between the companies and particularly between [Amarjit] Johal and [Jasbinder “Jazz”] Siekham at the relevant times”. In one of those decisions, *Super Shuttle Inc.*, BC EST #D106/00, an appeal filed by Jasbinder Siekham, no issue was taken with the decision of the Director to associate the companies under section 95 of the *Act*.

The Director submitted that at the relevant times, a period from approximately July, 1998 to July, 1999, there was evidence of common control or direction among the companies, including Newton Whalley. The factual basis for associating Newton Whalley with the other companies was stated in the following excerpts from the Determination:

Amarjit Johal (“Johal”) wrote a letter dated June 29, 1999 to Canadian National Railway Transportation. The letter was to advise CN Rail that he was assigning Cheam Tours’ CN contract to Newton Whalley Hi-Way Taxi Ltd.: “Cheam Tours has a contract with CN for deadhead trip and Super Shuttle was looking after the

services”. In that letter, Johal indicated that he made those changes in his capacity as president and sole director of Cheam Tours Ltd.

...

Schlieper indicated that [Amarjit] Johal effectively runs Newton Whalley Hi-Way Taxi Ltd. . . .

Manjinder Johal and Narinder Johal are listed as directors of both Johal Bros. Holdings Ltd. and Newton Whalley Hi-Way Taxi Ltd. Amarjit Johal is listed as a director of Johal Bros. Holdings Ltd. and Cheam Tours Ltd. The evidence indicates Amarjit Johal is also involved in the operation of Newton Whalley Hi-Way Taxi Ltd.

A copy of the June 29, 1999 letter was filed with the reply from the Director.

THE FACTS AND ANALYSIS

Section 95 is found in Part 11, Enforcement, of the *Act* and states:

95. *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, individuals, 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.*

In *Invicta Security Systems Ltd.*, BC EST #D349/96, the Tribunal stated:

[Section 95] allows the Director to pierce the corporate veil and look behind the legal structure, or form, of a business to the relationships of various entities that in reality compromise the substance of the business. There are four preconditions to an application of Section 95 to the circumstances of any matter before the Director:

1. There must be more than one corporation, individual, firm, syndicate or association;
2. Each of those entities must be carrying on a business, trade or undertaking;
3. There must be common control or direction; and
4. There must be some statutory purpose for treating the entities as one employer.

In the context of the reasons given for this appeal, there is no dispute with the conclusion that there was more than one corporation and that each of those corporations carried on business in the transportation industry, transporting paying passengers within specific geographical areas. Nor is there any appeal from the conclusion that there was a statutory purpose for the decision to associate the companies.

In essence, the appeal challenges the conclusion that the businesses were being carried on under “*common control or direction*”. More particularly, the appeal challenges the conclusion that there was common control or direction of Newton Whalley by or through any of the other individuals or corporations involved in the Determination.

The Determination correctly noted that when determining common control and direction, there are several relevant factors, including:

- ownership of the entities
- ownership of the physical assets
- degree of integration of operations
- financing
- common (or partially common) directors and officers
- day-to-day direction of employees

In the context of the requirement to establish common control or direction, the factual basis for associating Newton Whalley with the other companies for the purposes of the *Act*, was found primarily in the June 29, 1999 letter from Amarjit Johal to CN Rail and in the degree of commonality of directors and officers of several of the corporations, including Newton Whalley. In my opinion, there was an adequate factual foundation for the decision reached by the Direction.

Newton Whalley was actively involved in servicing Cheam Tours Ltd.’s CN Rail contract. In a letter dated June 29, 1999 Amarjit Johal, acting on behalf of Cheam Tours Ltd., notified CN Rail that, effective June 30, 1999, “Newton Whalley Hi-Way Taxi will be handling all dead head trips and dispatching services” under Cheam Tours Ltd.’s contract with CN Rail. In the letter, he invited the CN Rail representative to call him or “leave a message at Newton Whalley Hi-Way Taxi” if any further information was required. Newton Whalley claims no knowledge of any such arrangement. They do not, however, deny its existence nor do they provide any material that might show the arrangement was not as it appears on its face, a re-allocation of work among business entities over which Amarjit Johal had control or direction. The letter also supports the conclusion that Amarjit Johal had some control over the day-to-day operations of Newton Whalley. The implication of the letter is that he had enough control over how work was done at Newton Whalley to commit dispatching resources and drivers to the performance of Cheam Tours Ltd.’s CN Rail contract. Manjinder Johal and Narinder Johal were directors and officers of Newton Whalley at the time this arrangement was made. They had to have known of the arrangement and allowed or participated in its implementation at Newton Whalley. I also accept the submission of the Director that Amarjit Johal would be unlikely to transfer a lucrative contract to a company with which he had no association.

Newton Whalley has not shown the factual conclusions reached by the Director to be wrong, unreasonable or unfair. It is insufficient to simply state that they are “not aware” of any arrangement such as that described in the letter of June 29, 1999. The existence of the arrangement is indisputable. No effort has been made to explain or show why it was wrong to conclude that arrangement supported a Section 95 decision.

In the supplementary submission, Newton Whalley says that Amarjit Johal was “never involved in company business” during the relevant period. This denial flies in the face of what Amarjit Johal was doing in the letter of June 29, 1999 and I do not accept it.

The commonality of directors and/or officers of the related companies during the relevant period of time is obvious. Amarjit Johal was a director and officer of Johal Bros. Holdings Ltd., Super Shuttle Ltd., Local Minibus Ltd. and Cheam Tours Ltd., Manjinder Johal was an officer and director of Johal Bros. Holdings Ltd. and Newton Whalley Hi-Way Taxi Ltd. and Narinder Johal was an officer and/or director of Johal Bros. Holdings Ltd., Airport Super Shuttle Ltd. and Newton Whalley Hi-Way Taxi Ltd. Based on the substantial commonality of directors and officers linking Newton Whalley with the other companies, and in light of the other material on the file, I can find no error in the Director considering that factor to be important.

It might well be that the Johals are no longer involved in Newton Whalley and, as a consequence, there might no longer be any basis for finding “common control or direction” linking them to the other companies. That is certainly the tenor of the appeal. However, saying there might be no present basis to associate Newton Whalley with the other companies under Section 95 is substantially different from saying that there was no basis for such a decision in the circumstances relevant to the claims. Nothing in this appeal has affected the facts known to and relied on by the Director and Newton Whalley has not shown there was any error in the decision of the Director to associate them with the other companies under Section 95 of the *Act*.

The appeal is dismissed

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated December 24, 1999 be confirmed in the amount of \$13,249.00, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal