

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 -

Vancouver Cabs (1989) Ltd.
("Vancouver cabs")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE NO.: 98/384

DECISION DATE: September 25, 1998

DECISION

APPEARANCES/SUBMISSIONS

Mr. Karim Kurji on behalf of the Ajmer Singh Gill (“Gill”)

Ms. Elaine Bellamore on behalf of the Director of Employment Standards

OVERVIEW

This is an appeal by the Gill pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against a Determination of the Director of Employment Standards (the “Director”) issued on May 26, 1998 which found that Mr. Brian Selbst (“Selbst”) was an employee and entitled to \$9,298.72 on account of unpaid wages, unauthorized deductions, statutory holiday pay, vacation pay and compensation for length of service. Gill, who is an owner-operator and shareholder of Vancouver Cabs, questions the calculation of the amount owing to Selbst.

ISSUE TO BE DECIDED

Vancouver Cabs did not appeal the Determination which is addressed to it. The appeal is filed by Gill, an owner-operator and shareholder of Vancouver Cabs, who owns the taxi driven by Selbst. The Determination concluded that Selbst, who was a driver providing services to “Vancouver Taxi and its owner/operators,” was an employee. This appeal raises two issues: first, whether the Determination in a sufficiently clear and unambiguous manner identifies Vancouver Cabs as Selbst’ employer and, if so, whether Gill has standing to bring the appeal.

FACTS AND ANALYSIS

Vancouver Cabs is a limited company, operating under the name Vancouver Taxi. Owner-operators are shareholders of Vancouver Cabs and they own one or more taxis. Vancouver Cabs operates a dispatch system and performs certain administrative services for the owner-operators. They pay a fee for dispatch and other services.

The Employment Standards Branch received a complaint from Selbst. He alleged that he, as of April 30, 1996, had been a taxi driver with the Vancouver Cabs. Apparently, he drove a taxi owned by Gill.

The delegate explains that she went to considerable effort to contact Vancouver Cabs and that it refused or neglected to participate in the investigation. Vancouver Cabs is not in a position to dispute this, as it did not file an appeal of the Determination. The delegate examined the relationship between Selbst and Vancouver Cabs based on information provided by the former “as the employer has not responded to the investigator’s letter” I agree with my colleagues in *Kaiser Stables*, BCEST #D058/97, and numerous other cases, that the Tribunal will not allow an appellant who refuses or neglects to participate in the Director’s investigation, to file an appeal on the merits of the Determination.

The delegate’s analysis could well establish that Selbst was an employee of Vancouver Cabs. The delegate utilized several tests in reaching the conclusion that “lease operators (drivers) providing services to *Vancouver Taxi and its owner/operators* are employees as defined by the Employment Standards Act. Accordingly, I find that Brian Selbst has an entitlement to the minimum standards afforded to him under the legislation.” (Emphasis added) In my view, the wording of the conclusion was not as clear as I would have wished. Employee status is only one side of the coin: employee status is required to enjoy the entitlements under the *Act*. The other side of the coin, where is it not readily apparent, is to identify the employer. Nevertheless, in my view, the Determination is sufficiently clear in the following respects: first, it was addressed to, and served on, Vancouver Cabs. Second, the Determination ordered Vancouver Cabs to cease contravening specified provisions of the Act and to pay the amount to Selbst. Third, a fair reading of the analysis and the conclusions points to Vancouver Cabs as the employer. I am mindful of the starting point for the delegate’s analysis, namely her view that the “Employer’s position is that Mr. Selbst was not an employee of Vancouver Taxi”. Vancouver Cabs did not appeal. If Vancouver Cabs disagreed with the Determination, which was addressed to it, presumably it would have appealed it in a timely fashion under the *Act*.

That leaves the second issue: Gill’s standing to bring the appeal. In my view, he does not have standing to bring the appeal. Although he is mentioned in the Determination as the owner of the taxi driven by Selbst, he is not a party to the Determination, the corporate entity (Vancouver Cabs) is. He is not an authorized agent of Vancouver Cabs. While he is a shareholder of the corporate entity, Vancouver Cabs, he is not affected in a direct and legally material manner.

In short, there is no appeal properly before the Tribunal.

In any event, if I am wrong with respect to the above, I would, nevertheless, still dismiss Gill’s appeal. As the appellant, Gill has the burden to persuade me that the Determination is wrong. While Gill argues that Selbst took breaks, and did not work the entire 12 hour shift, there is no evidence to support this. In his appeal, Gill suggested that Selbst’s hours of work were less than indicated by the trip sheets. Part of the appeal was a long list of dates and--fairly specific--start/finish times for Selbst on each day between November 28, 1994 and December 14, 1995. Gill did not explain the source and origin of the dates and times. In any event, having reviewed the

daily trip sheets, which also in many instances start and finish time, supplied by Gill in the appeal, I find that they are not consistent with Selbst's daily start and finish times suggested by Gill. There is no evidence to support the assertion that the delegate's calculation is wrong.

In the result, I am not satisfied that the Determination ought to be set aside.

ORDER

Pursuant to Section 115 of the Act, I order that the Determinations in this matter, dated May 26, 1998 be confirmed in the amount of \$9,298.72 together with such interest as may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

Ib Skov Petersen
Adjudicator
Employment Standards Tribunal