

**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-

North Shore Taxi (1996) Ltd.

(“North Shore Taxi” or the “employer”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 98/402

**DATE OF HEARING:** September 15, 1998

**DATE OF DECISION:** November 23, 1998

**DECISION**

**APPEARANCES**

Israel Chafetz                      for North Shore Taxi (1966) Ltd.  
Ranjit Puar                         on his own behalf  
Wendy L. Jones                    for the Director of Employment Standards

**OVERVIEW**

This is an appeal brought by North Shore Taxi (1966) Ltd. (“North Shore Taxi” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on June 1st, 1998 under file number 002343 (the “Determination”).

The Director determined that North Shore Taxi owed its former employee, Ranjit Puar (“Puar”), the sum of \$9,626.04 on account of unpaid wages and interest. Further, by way of the Determination, a \$0 penalty was issued pursuant to sections 98 and 29(2)(a) of the *Act* and *Employment Standards Regulation*, respectively.

This appeal was heard at the same time as four other employer appeals involving four other former North Shore Taxi drivers. The employer’s evidence was common to all five appeals.

**ISSUE ON APPEAL**

North Shore Taxi asserts that the delegate erred in rejecting the employer’s “daily trip sheets” which show, in Puar’s own hand, that he worked 8 hours or less each day, regardless of the duration of his shift. The time beyond 8 hours was recorded by Puar as “break” time and thus the employer says that Puar should not be compensated for these latter hours as he was not working. Puar, for his part, alleged (and this was accepted by the delegate) that the daily trip sheets do not accurately reflect his total working hours and that, in fact, he was working throughout his entire shift each and every day.

**FACTS**

North Shore Taxi is a licensed taxicab company whose operations, consisting of some 78 taxicabs in the North Shore Taxi livery, span from Deep Cove to Lions’ Bay on the “north shore” of greater Vancouver. The company schedules its drivers for one of two basic shifts, the day shift from 4:00 A.M. to 4 P.M. and the night shift from 4:00 P.M. to 4:00 A.M. However, there is a certain amount of variance regarding these shift times--some drivers start late and finish earlier; an

individual cab is available to a driver within a designated 12-hour shift period but the actual hours worked are, to some degree, within the driver's own discretion. During the time period in question, North Shore Taxi drivers were paid a percentage (typically 45%) of the fares that they generated while on shift. Puar was employed as a taxicab driver with North Shore Taxi from January 1993 until December 8th, 1997. The Determination spans the period April 12th, 1995 to April 2nd, 1997.

As noted above, the principal issue in this appeal, and in four other appeals that were heard at the same time involving four other former North Shore Taxi drivers, is whether the Director's delegate was entitled to disregard the complainant employees' "Daily Trip Sheets"--which, in all cases, showed that the employees worked no more than 8 hours per day regardless of their "start" and "end" times--in favour of the employees' assertions that they were typically "on duty" for more than 8 hours but only recorded 8 hours "working time" as directed by their employer.

While a number of Puar's "Daily Trip Sheets" were placed into evidence, his May 31st, 1996 trip sheet is typical (this document was appended to the Determination). It shows a start time of 4:30 A.M. and a finish time of 16:00 (4:00 P.M.) for a total "shift duration" of 11.5 hours; Puar recorded 8 hours as "hours worked" and 3.5 hours as "total breaks". The delegate accepted Puar's position that he was in fact working throughout his entire shift and thus was entitled to be paid at the statutory minimum wage for all hours worked, not just the 8 hours (or less) he recorded as having worked on the individual daily trip sheets.

Puar testified that if he drove a 12-hour shift, he was, in fact, working that entire time. His evidence is that he and all other drivers were instructed to record no more than 8 hours of working time on a shift regardless of the actual time on-duty. The balance of the shift beyond 8 hours was to be recorded as "break time". Further, Puar stated that he was instructed to record less than 8 "hours worked" if his earnings, on a per hour basis, fell below the \$7 per hour minimum wage set out in the *Employment Standards Regulation* (see section 15); in that event, he was to record whatever figure lesser figure that would produce an hourly rate of not less than \$7 per hour.

While during the early years of his employment he was able to make a reasonable living, Puar testified that in recent years there "were too many cabs on the road" and that a driver could not make a reasonable living simply working 8 hours each day. Puar says that he was called into the manager's office on at least two occasions and told that he was to record no more than 8 hours worked each day. He says that he "took his breaks in the car" and ate his meals in the car. In cross-examination he admitted that a number of drivers often met at a local donut shop during their shifts for a meal or coffee break but that he did not do so. Puar denied taking any breaks where he booked out of the computer dispatch system and was physically away from his cab.

## ANALYSIS

At the outset it should be noted that during the time period material to this appeal, section 37.1 of the *Regulation* exempted taxicab drivers from certain provisions of the *Act* including the meal break and overtime provisions. However, taxicab drivers have never been exempted from sections 16 and 17 of the *Act* and thus are entitled to be paid at least the minimum wage for all

hours worked. “Work means the labour or services an employee performs for an employer whether in the employer’s residence or elsewhere” and “an employee is deemed to be at work while on call at a location designated by the employer” (other than the employee’s residence)--see subsections 1(1) and (2) of the *Act*.

The employer’s position is quite straight-forward. In late 1995, with the pending introduction of a new *Employment Standards Act*, the employer took steps to ensure that it would not be liable for paying its drivers for anything more than 8 working hours per day. To that end, it directed its drivers that they could no longer work more than 8 hours per day. Although a cab would be made available to each driver for a 12-hour shift, the onus would be on the driver to work only 8 hours within that 12-hour shift period. The drivers were told to take as many breaks as they wished but not to work any more than 8 hours per day. Further, at the end of each shift their total working hours as well as their “break times” were to be recorded on the daily trip sheet.

The employer placed into evidence Puar’s daily trip sheets for the latter half of January and all of February 1997. Unlike any of the four other respondent drivers, Puar not only recorded the “total breaks” on his trip sheets but, in addition, specifically set out the individual duration of, and the reason for, the various breaks that he took during his shift. Throughout mid-January to the end of February 1997, Puar generally drove the day shift, usually coming on shift somewhere between 6:30 and 7:00 A.M. During the day, Puar appears to have regularly taken a morning and afternoon coffee break as well as a breakfast and lunch break all of which were specifically recorded by him. For example, on February 10th, 1997 Puar recorded a break for breakfast of 1 hour, another 1 hour break for lunch and both a morning and afternoon coffee break each lasting one-half hour. In the six-week period from mid-January to the end of February 1997, Puar worked 35 shifts and on 20 of these shifts he recorded total “breaks” of 2 hours or less; indeed, on two days he recorded no breaks at all.

I should note that this pattern of recorded “break time” stands in marked contrast to that of the other respondent drivers *Azad* (EST Decision No. 465/98) and *Vaziri* (EST Decision No. 466/98) who typically recorded 3 to 6 hours of break time each shift. In the latter two appeals, I held that the employees’ recorded break time was inaccurate (overstated) by several hours each day, however, as will be seen, I am not inclined to the view that Puar’s recorded break time exceeds his actual break time.

On four days during this 6-week period, Puar worked an extended shift (more than 15 hours) but on each of these days the pattern of his recorded fares shows that he was, in effect, splitting his day into two (or even three) separate components with a lengthy break in between during which time there were no fares recorded on the trip sheet. For example, on February 7th, 1997 Puar’s shift was 15.5 hours commencing at 6:30 A.M. and ending at 10:00 P.M. but not a single fare was recorded from 11:20 A.M. until 3:05 P.M.--a “gap” of about 3.5 hours--or from 6:25 P.M. until 9:10 P.M.--a “gap” of about 2.5 hours. In total, Puar recorded 7.5 hours in breaks on February 7th and when one includes an additional 1.5 hour breakfast break (as recorded on the trip sheet) all of the break time is fully accounted for.

I do not accept that if Puar was on-duty and booked into the computer dispatch system that he would not have been dispatched on even one call during the early afternoon and early evening

hours. I find it to be substantially more probable that Puar was, as his own time records indicate, booked out of the system and on a noncompensable break during the times that he so indicated on his trip sheets. During these breaks--which were of an extended duration--he was not on-duty nor was he on-call and thus he cannot expect to be paid for this time.

Based on the evidence before me, I am satisfied that Puar was “working” or on-call only during the times he recorded as working time on his daily trip sheets. It follows that the Determination must be varied inasmuch as the delegate proceeded on the assumption that Puar was working throughout his entire shift each day.

### **ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination be varied so that Puar’s wage entitlement is calculated on the basis that the “break time” recorded in his daily trip sheets is considered to be noncompensable nonworking time. This matter is referred back to the Director solely for the purpose of calculating Puar's unpaid wage entitlement, including any necessary adjustments with respect to statutory holiday pay, vacation pay and interest in accordance with these reasons.

It may well be, after the appropriate calculations have undertaken, that Puar is not entitled to any further monies on account of unpaid wages. In that event, the \$0 penalty set out in the Determination is cancelled; on the other hand, if, following the appropriate calculations, the employer is remains liable to Puar on account of unpaid wages, the \$0 penalty is confirmed.

**Kenneth Wm. Thornicroft, *Adjudicator***  
**Employment Standards Tribunal**