DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

WCAT DECISION DATE: **November 8, 2018**

WCAT DECISION NUMBER: **A1700172**

WCAT PANEL: **Guy Riecken**

RE: Gurinder Singh Rai v. Ronald A. Chisholm, First West Leasing Ltd. and First Choice Security & Audio Systems (2000) Ltd.
New Westminster Registry No. NEW-S-M-164382
Section 257 Determinations
WCAT No. A1700172

Applicants: Ronald A. Chisholm, First West Leasing Ltd. and First Choice Security & Audio Systems (2000) Ltd.
(the "Defendants")

Respondent: Gurinder Singh Rai
(the "Plaintiff")

Representatives:

For Applicants: Jennie Milligan
Beck, Robinson & Company

For Respondent: Valerie Munn / Michael W. Yu
Brij Mohan & Associates

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

Introduction

[1] The plaintiff, Gurinder Singh Rai, commenced a legal action with respect to personal injuries sustained in a motor vehicle accident, on or about February 6, 2013[1], that occurred at or near the intersection of 72 Avenue and 144 Street in the City of Surrey, British Columbia (the accident). At the time of the accident the defendant, Ronald A. Chisholm, was driving a vehicle owned by the defendants, First West Leasing Ltd. (as the lessor) and First Choice Security & Audio Systems (2000) Ltd. (as the lessee), which struck the plaintiff's vehicle.

[2] Pursuant to section 257 of the *Workers Compensation Act* (Act), the Workers' Compensation Appeal Tribunal (WCAT) may be asked by a party or the court to make determinations and certify to the court concerning civil actions based on a disability caused by occupational disease, a personal injury, or death.

[3] On December 8, 2016, WCAT received a section 257 application from the defendants' legal counsel. The defendants seek determinations of the status of the plaintiff and of the defendant, Ronald A. Chisholm. Determinations of the status of the other two defendants have not been requested.

[4] There is a related action respecting the same accident in which the plaintiff, Gurinder Singh Rai, claims against the defendant, the Insurance Corporation of British Columbia (ICBC), for benefits under Part 7 of the regulations to the *Insurance (Motor Vehicle) Act* (Part 7 action). A section 257 application was not been received respecting the Part 7 action.

Issue(s)

[5] Determinations have been requested of the status of the plaintiff, Gurinder Singh Rai, and of the defendant, Ronald A. Chisholm.

[1] The plaintiff's Notice of Civil Claim indicates the accident date is February 7, 2013 but the parties have advised WCAT that based on the police report the correct date of the accident is February 6, 2013.

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Jurisdiction and Procedure

[6] Part 4 of the Act applies to proceedings under section 257, except that no time frame applies to making the WCAT decision (section 257(3)).

[7] WCAT is not bound by legal precedent (section 250(1) of the Act). WCAT must make its decision based on the merits and justice of the case but, in so doing, must apply a published policy of the board of directors of the Workers' Compensation Board (Board), operating as WorkSafeBC, that is applicable (section 250(2)). The applicable policies are found in the Board's *Assessment Manual* and in the Board's *Rehabilitation Services and Claims Manual, Volume II* (RSCM II). Unless otherwise indicated, the policies referred to in this decision are those in effect at the date of the incident.

[8] Section 254(c) of the Act provides that WCAT has exclusive jurisdiction to inquire into, hear, and determine all those matters and questions of fact, law, and discretion arising or required to be determined under Part 4 of the Act, including all matters that WCAT is requested to determine under section 257. The WCAT decision is final and conclusive and is not open to question or review in any court (section 255(1)).

[9] The court determines the effect of the certificate on the legal action.

[10] At the time of the accident the plaintiff was a partner in a business, namely Bhupinder Singh Chahal and Gurinder Singh Rai dba Meet Enterprises (Meet Enterprises). WCAT invited the partners of Meet Enterprises to participate in the application as interested persons. The partners of Meet Enterprises did not respond and are not participating. Although the plaintiff is not participating in that capacity, he is participating as a named party to the legal action.

[11] WCAT also invited ICBC to participate in the section 257 application as an interested person, but ICBC is not participating.

[12] The plaintiff commenced a provisional claim with the Board for compensation in relation to the injuries he sustained in the February 6, 2013 accident. Certain evidence from his claim file was disclosed to the parties to the civil action. I am considering that evidence anew for the purposes of this application, and any prior Board decisions are not binding on me.

[13] Legal counsel for the plaintiff and for the defendants each provided written submissions with respect to the section 257 application.

[14] Neither of the parties' legal counsel requested an oral hearing. The requested status determinations involve largely undisputed facts and matters of law and policy. To the extent that there are disputed facts, I am able to resolve them based on the written

evidence and submissions. Accordingly, the application is being decided on the basis of the written evidence and submissions.

Background and Evidence

[15] WCAT was provided with transcripts of the examinations for discovery of the plaintiff (on April 17, 2015 and October 7, 2016) and of the defendant (on October 7, 2016). WCAT also received the following documents:

- A memorandum dated May 3, 2018 from the Board's Assessment Department including the following information:
    - An account in the name of Bhupinder Singh Chahal & Gurinder Singh Rai dba Meet Enterprises was registered with the Board for Personal Optional Protection (POP) coverage of the partners and worker coverage on June 7, 2010; the POP coverage was cancelled on May 25, 2011 and the worker coverage, which was in effect at the time of the accident, expired on May 8, 2015.
    - An account in the name of First Choice Security & Audio Systems (2000) Ltd. (First Choice) was registered with the Board at the time of the accident.
- A General Partnership Summary for Meet Enterprises (current to May 22, 2018), obtained from B.C. Registry Services, showing that Meet Enterprises was registered on May 3, 2010 with two partners: Bhupinder Singh Chahal and Gurinder Singh Rai.
- Gurinder Singh Rai's income tax statements for the years 2010, 2011, 2012, 2013, and 2014, indicating that in 2011, 2012, 2013 he reported business income and expenses, but no employment income.

[16] Based on the submissions and evidence received, the following facts are not in dispute.

[17] At the time of the accident the plaintiff was a partner in Meet Enterprises, which was not incorporated. Meet Enterprises was in the drywall installation business. The plaintiff had business cards bearing the name of Meet Enterprises and its contact information. He would give these to various drywall tapers that he met. Meet Enterprises would work for whatever firm contacted him and hired him to install drywall at construction projects. Meet Enterprises was paid by the foot of installed drywall. Meet Enterprises performed drywall installation for various tapers/companies at different times, for example, working for one company one day and a different company the next day.

[18] Meet Enterprises did not have regular employees, but hired workers as needed. On the day of the accident Meet Enterprises had hired two workers for the day to work at one such project. Meet Enterprises typically provided nails, screws and the necessary tools to its workers. The tapers provided the drywall that Meet Enterprises installed and also provided scaffolding.

[19] On the day of the accident, which was the first day for Meet Enterprises on a new job, the plaintiff drove the two workers to the jobsite. After dropping the two workers at the jobsite the plaintiff drove to a building supply store and bought some nails and screws. After purchasing the nails and screws, the plaintiff was driving back to the jobsite when the accident occurred.

[20] Mr. Chisholm, was employed by First Choice as a security system installation project manager. On the day of accident after leaving his home he attended the First Choice office and then left to drive to a job site in a vehicle owned by First Choice. He did not make any stops on the way to the job site. The accident occurred on the way to the jobsite.

Reasons and Findings

Status of the plaintiff, Gurinder Singh Rai

[21] Section 1 of the Act includes the following definitions:

> **"employer"** includes every person having in their service under a contract of hiring or apprenticeship, written or oral, express or implied, a person engaged in work in or about an industry;
>
> …
>
> **"worker"** includes
>
> (a) a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise; …

[22] Section 2 of the Act states:

> **2** (1) This Part applies to all employers, as employers, and all workers in British Columbia except employers or workers exempted by order of the Board.
>
> (2) The Board may direct that this Part applies on the terms specified in the Board's direction
>
> (a) to an independent operator who is neither an employer nor a worker as though the independent operator was a worker, or
>
> (b) to an employer as though the employer was a worker.

(3) The application of this Part under subsection (2) to an employer does not exempt the employer, as an employer, from the application of this Part.

[23] RSCM II policy item #6.10, "Nature of Employment Relationship," provides that, where a person contracts with another to provide labour in an industry covered by the Act, the Board considers that the contract may create one of three types of relationship in which the person doing the work may be an independent firm, a labour contractor, or a worker. The policies in the Board's *Assessment Manual*, including policy item #AP1-1-1, "Coverage under Act – Description of Terms," provide detailed provisions with respect to those categories.

[24] At the time of the accident, the *Assessment Manual* at policy item #AP1-1-1 included general descriptions of the following terms:

- *Employer* – An employer is a person or entity employing workers. The employer may be a sole proprietor, a partner in a partnership, a corporation, or another type of legal entity. "Employer" is defined under section 1 for purposes of Part 1 of the *Act*. An employer is an "independent firm".
- *Worker* – A worker is an individual who performs work under a contract with an employer and has no business existence under the contract independent of the employer. "Worker" is defined under section 1 for purposes of Part 1 of the *Act*. A worker cannot be an "independent firm".
- *Independent Operator* – "Independent operator" is not defined in the *Act*. The term is referred to in section 2(2) of the *Act* as being an individual "who is neither an employer nor a worker" and to whom the Board may direct that Part 1 applies as though the independent operator was a worker. An independent operator performs work under a contract, but has a business existence independent of the person or entity for whom that work is performed. An independent operator is an "independent firm".
- *Labour Contractor* – The Board has created the term "labour contractor" to assist it in determining whether an individual is an employer, worker or independent operator. A labour contractor who is a worker cannot be an "independent firm". For more information about "labour contractors", see Item AP1-1-7.
- *Firm* – A firm is any person or entity carrying on a business.
- *Independent Firm* – The Board has created the term "independent firm" to identify those persons who are either required by the *Act* to register

with the Board as employers of workers, or from whom, as unincorporated employers or independent operators, the Board will accept a registration through the purchase of Personal Optional Protection for themselves. An independent firm performs work under a contract, but has a business existence under the contract independent of the person or entity for whom that work is performed. An independent firm may be an individual, a corporation or another type of legal entity. A worker cannot be an "independent firm". For more information about "independent firms", see Item AP1-1-3.

- *Independent Contractor* – An independent contractor is an independent firm.

[25] *Assessment Manual* policy item #AP1-1-3, "Coverage under *Act* – Distinguishing Between Employment Relationships and Relationships Between Independent Firms," sets out nine factors and a major test to aid in distinguishing between employment relationships and relationships between independent firms. The general test, which largely encompasses the nine factors, is whether the individual doing the work exists as a business enterprise independently of the person or entity for whom the work is done. This item also provides guidelines on parties who would be considered independent firms.

[26] At the time of the accident, policy item #AP1-1-4, "Coverage under *Act* – Employers," provided:

(a) General

An employer is a person or entity employing workers. The employer may be a sole proprietor, a partnership, a corporation, or another type of legal entity. An employer may also be an independent contractor who employs workers or a labour contractor who employs workers and elects to be registered as an employer. An employer is an "independent firm" for purposes of Item AP1-1-3.

(b) Proprietors and partners

Proprietors and partners of an unincorporated business are employers if the business has workers and independent operators if the business does not have workers. They do not have personal compensation coverage unless they have Personal Optional Protection.

The children of a proprietor or partner who are paid by the proprietorship or partnership and have an employment relationship are considered to be

> workers, regardless of age. Spouses of single proprietors have been exempted from coverage, but the spouse of a partner who is working for the partnership and is paid for his or her services is a worker.
>
> **(c) Principals of corporations or similar entities**
>
> As the incorporated entity is considered the employer, a director, shareholder or other principal of the company who is active in the business operations of the company is generally considered to be a worker under the *Act*. A spouse, child or other family member of a principal or a shareholder for whom earnings are reported for income tax purposes is considered to be active in the business operations and a worker.
>
> …

[27] In their submissions with respect to the plaintiff's status, the defendants focused on the factors in policy item #AP1-1-3(a) and the examples of independent firms in policy item #AP1-1-3(b). Their position is that the plaintiff was a worker at the time of the accident under those factors because:

- The plaintiff performed drywall installation, which is a service of labour.
- The tapers directed the plaintiff as to when and where to install drywall, and therefore exercised control over him.
- As the tapers provided the drywall and paid Meet Enterprises by the foot of installed drywall, there was little opportunity for profit or loss by the plaintiff.
- The tapers provided the major items of equipment, such as scaffolding.
- Meet Enterprises was not required to obtain permits for the building projects where the plaintiff installed drywall.
- Meet Enterprises did not have written contracts with the tapers; few details of the arrangements between Meet Enterprises and the tapers are known, other than that Meet Enterprises was paid by the foot.
- As the plaintiff did not have POP coverage at the time of the accident, it appears that he expected the tapers to fulfill prevention and other obligations under the Act.
- Although Meet Enterprises did work for various tapers, the plaintiff testified on discovery that Meet Enterprises worked for only a few of them and worked on only one house at a time.
- Meet Enterprises hired workers as needed.

[28] The defendants submit that the majority of these factors weigh in favour of an employment relationship between Meet Enterprises and the tapers. In addition, Meet Enterprises did not come within any of the specific guidelines in policy item #AP1-1-3(b) that are used to identify independent firms. As Meet Enterprises was paid by the foot, it had little opportunity for profit or loss when working for the tapers. In addition, Meet Enterprises did not own major revenue-producing equipment and it entered to one contract at a time. Accordingly, the plaintiff was a worker at the time of the accident.

[29] The defendants refer to the RSCM II policy item #C3-19.00, regarding travelling employees, and submit that the plaintiff was in the course of his employment at the time of the accident because of the following circumstances. The plaintiff was driving between two work locations (the building supply store and the construction site), having gone to the store to purchase items needed for the work being performed by Meet Enterprises at the construction site.

[30] The plaintiff's position is that under the provisions of policy item #AP1-1-4(b) the plaintiff was not a worker at the time of the accident, since, as a partner of an unincorporated business with workers, he was an employer and would only have personal compensation coverage if he had purchased POP coverage from the Board. As he did not have POP coverage at the time of the accident, personal compensation coverage did not extend to him.

[31] The defendants did not address policy item #AP1-1-4 in their submission and did not provide a rebuttal to the plaintiff's submission, although given an opportunity to do so.

[32] The plaintiff cited a number of prior WCAT decisions concerning proprietors of unincorporated businesses. It is sufficient to refer to one of them, namely *WCAT Decision A1603163* (*Derkatch v. Halliday, et al*.). In that case, the plaintiff was a plumber operating as a sole proprietor under the name MTM Renovation/Plumbing and Heating (MTM). MTM was not incorporated and the plaintiff did not have partners or employees. He had chosen not to purchase POP coverage for himself. At the time of the accident, the plaintiff had just left a building supply store where he had picked up tools and equipment needed for his work and was on his way back to his home which was a business location for him.

[33] The panel in *WCAT Decision A1603163* noted that section 10(9) of the Act provides:

> For the purpose of this section, **"worker"** includes an employer admitted under section 2 (2).

[34] The panel observed that if the plaintiff had purchased POP coverage from the Board he would be considered a worker pursuant to section 2(2) of the Act and paragraph (f) in

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the definition of the term "worker" in section 1 of the Act. However, the plaintiff had not purchased POP coverage.

[35] The panel considered the provisions of policy items #AP1-1-1 and #AP1-1-4 of the *Assessment Manual*, and noted that if the plaintiff's business had been incorporated, the plaintiff would normally be considered a worker of the company based on policy item #AP1-1-4. However, MTM was not incorporated. The panel went on to state:

> [26] I find that the defendants' submissions err in conflating two separate issues. The first issue concerns whether the plaintiff was a worker, or an independent operator/employer under the Act. The second issue concerns whether the plaintiff was engaged in employment-connected activities at the time of the accident. If the plaintiff was an independent operator or an employer engaged in employment-connected activities at the time of the accident that does not have the effect of making the plaintiff a worker. When the plaintiff was working, he was engaged in carrying on his own business as an independent firm rather than being engaged in a relationship of employment with another person or business as a worker of that other person or business.
>
> [27] The plaintiff was either an independent operator (if he did not have workers) or an employer (if he had workers). In either case, he was not a worker within the meaning of Part 1 of the Act. When he was working, and engaged in his work-related activities as a plumber, he was doing so as the proprietor of his independent business. I find that the plaintiff was carrying on business as an independent firm, and was not a worker within the meaning of Part 1 of the Act.
>
> [28] The plaintiff's registration with the Board would not have the effect of making him an employer, in the absence of evidence to show that he was in fact employing workers. However, my decision is the same, whether the plaintiff was an independent operator or an employer. Accordingly, I need not determine whether he was an independent operator or an employer.
>
> [29] Evidence and submissions have been provided concerning the question as to whether the plaintiff was working at the time of the accident. The plaintiff's evidence is that he was engaged in personal activities, and was not working on the day of the accident. However, even if the plaintiff's evidence was that he was working at the time of the accident, this would not have the effect of making

> him a worker within the meaning of Part 1 of the Act. Accordingly, I find it is unnecessary to my decision to address the question as to whether the plaintiff was working at the time of the accident.

[36] I find the foregoing reasoning by the panel in *WCAT Decision A1603163* relevant in the circumstances of the present case. Aside from the fact that the plaintiff here was a partner in an unincorporated business rather than a sole proprietor of an unincorporated business, the circumstances relevant to policy item #AP1-1-4 are similar. As Meet Enterprises was not incorporated, and as at the time of the accident the plaintiff had not kept in effect the POP coverage he had purchased in prior years from the Board, any work he was doing was as a partner in an unincorporated firm. This means that he was not a worker within the meaning of Part 1 of Act even if he was engaged in employment-related activities when the accident occurred.

[37] An additional circumstance in this case was that Meet Enterprises, which was registered with the Board as an employer, had workers at the time of the accident. Accordingly, under policy item #AP1-1-4 the plaintiff was an employer.

[38] As in *WCAT Decision A1603163*, in this case the defendants provided evidence and submissions concerning whether the plaintiff was working at the time of the accident. As in that decision, even if the plaintiff here was working at the time of the accident, this would not have the effect of making him a worker within the meaning of Part 1 of the Act. Therefore, it is not necessary to determine whether he was working at the time of the accident.

[39] I find that at the time of the accident the plaintiff was not a worker within the meaning of Part 1 of the Act.

[40] I note that the defendants' submission that the plaintiff was in the course of his employment at the time of the accident was conditional, in the sense that it stated the issue as: "If the Plaintiff was a worker, was he in the course of his employment at the time of the Accident?" Since I have found that the plaintiff was not a worker, it appears unnecessary to address the question whether his injuries arose out of and in the course of his employment.

[41] In addition, I note that in *WCAT Decision A1603163* the panel commented as follows:

> …
>
> *(d) Additional comments*
>
> [31] It is not within WCAT's jurisdiction to address the application of section 10 of the Act in relation to the legal action. My comments

below are not necessary to my decision, and do not involve any determination. Section 10(1) of the Act provides:

> **The provisions of this Part are in lieu of any right and rights of action, statutory or otherwise, founded on a breach of duty of care or any other cause of action, whether that duty or cause of action is imposed by or arises by reason of law or contract, express or implied, to which a worker, dependant or member of the family of the worker is or may be entitled** against the employer of the worker, or against any employer within the scope of this Part, or against any worker, in respect of any personal injury, disablement or death arising out of and in the course of employment and no action in respect of it lies. This provision applies only when the action or conduct of the employer, the employer's servant or agent, or the worker, which caused the breach of duty arose out of and in the course of employment within the scope of this Part.
>
> [emphasis added]

[32] *WCAT-2014-00638, Chenier v. Szili*, reviewed several WCAT decisions dealing with the status of persons operating as independent firms without Personal Optional Protection coverage, in which the person was found to not be a worker within the meaning of Part 1 of the Act. These decisions included *WCAT-2012-02631, Renwick v. Hopson*; *WCAT-2012-00669 / WCAT-2012-00670, Hough v. Dill, Hough v. ICBC*; *WCAT 2010 02945, Kong v. Nuttal et al.*; *WCAT-2010-00442, Relph v. Lyons et al.*, *WCAT-2007-03209*, *Krohn v. TBM Transportation Ltd. et al.*, and *WCAT-2007-03128 / WCAT-2007-03129, Scarpino v. Mill Bay Towing and Recovery Ltd. et al.*, *Scarpino v. ICBC*., and *WCAT-2013-02902, Severson v. McLean et al. WCAT 2014 00638* reasoned as follows:

> [23] The plaintiff had the option of registering with the Board for POP [Personal Optional Protection] coverage. Had he elected to purchase such coverage, he would be a worker pursuant to the definition provided under (f) in the definition of the term "worker," pursuant to

section 2(2)(b) of the Act. As stated in policy, such a proprietor does not have workers' compensation coverage unless the proprietor purchases POP coverage.

[24] I agree with the reasoning in *WCAT-2013-02902* and the prior WCAT and Appeal Division decisions cited by the plaintiff. I find that the plaintiff was an employer, carrying on business as an independent firm. The fact that he performed physical work did not make him a worker, in the absence of a relationship of employment with some other person or company which would be his employer. As PL Demolition was not incorporated, it did not have a separate existence from the plaintiff so as to be his employer. As the plaintiff had not purchased POP coverage, he was not a worker within the meaning of Part 1 of the Act. The provision of POP coverage is conditional on a person making an application and complying with the conditions for obtaining such coverage, as set out in policy.

[25] I find, therefore, that the plaintiff was not a worker within the meaning of Part 1 of the Act.

[26] I have not proceeded to address the further issue as to whether the injuries suffered by the plaintiff arose out of and in the course of employment within the scope of Part 1 of the Act. This issue might be answered in the affirmative, based on the plaintiff's status as an employer. However, such a determination would not appear relevant to the legal action, as there does not appear to be anything in the wording of section 10 of the Act to limit an action by an employer. I make no finding in this regard.

[33] Section 10(1) of the Act is framed in reference to a legal action by a worker (or a dependant or member of the family of the worker).

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> There is no wording in section 10(1) to limit a right of legal action by an independent operator or an employer. Accordingly, it would not appear to matter whether the plaintiff was pursuing work-related activities at the time of the accident. I have thus limited my determination to the issue as to whether the plaintiff was a worker at the time of the accident (as being the pertinent issue in relation to section 10(1) of the Act).

[42] I agree with the foregoing reasoning and take the same approach in this decision, which does not include a determination of whether the plaintiff's injuries were employment-related. In the event that any further determination is required respecting the plaintiff's status in relation to the legal action, a request may be made for a supplemental certificate.

Status of the defendant, Ronald A. Chisholm

[43] In light of my determination that the plaintiff was not a worker at the time of the accident, it may not be necessary to determine the status of Mr. Chisholm's status in relation to the legal action. However, as the defendants requested a determination of Mr. Chisholm's status, I will address this issue.

[44] The defendants referred to evidence supporting a finding that Mr. Chisholm was a worker at the time of the accident. The plaintiff did not address Mr. Chisholm's status.

[45] I find the following evidence supports a finding that Mr. Chisholm was a worker at the time of the accident:

- Mr. Chisholm worked as a security system installation project manager and identified his employer as First Choice.
- He stated that he was paid by the hour, including time spent travelling to job sites.
- First Choice provided Mr. Chisholm with a company truck to travel to various job sites.
- First Choice provided him with a gas card for the company truck; he did not pay for any gas for the truck personally.
- He worked regular shifts from 8:00 a.m. or 8:30 a.m. until 4:30 p.m. and was not required to track his travel time.
- According to the Board's records, First Choice was registered with the Board as an employer at the time of the accident.

[46] No evidence has been provided indicating that Mr. Chisholm operated as an independent business.

[47] I find that at the time of the accident Mr. Chisholm was a worker within the meaning of Part 1 of the Act.

[48] I also find that the accident arose out of and in the course of Mr. Chisholm's employment.

[49] RSCM II policy item #C3-14.00, "Arising Out of and In the Course of the Employment," explains that "in the course of the employment" generally refers to whether the injury or death happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the employment. "Arising out of the employment" generally refers to the cause of the injury. The policy recognizes that "employment" is a broader concept than "work."

[50] Policy item #C3-14.00 sets out a non-exhaustive list of nine non-medical factors to be considered in making a decision as to whether an injury arose out of and in the course of a worker's employment. These factors are:

1. Whether the injury occurred on the employer's premises;
2. Whether the worker was doing something for the benefit of the employer when the injury occurred;
3. Whether the worker was acting on the employer's instructions at the time of the injury;
4. Whether the injury occurred while the worker was using equipment supplied by the employer;
5. Whether the injury occurred while the worker was being paid (picking up their pay);
6. Whether the injury occurred during a time period for which the worker was being paid;
7. Whether the injury occurred as result of the activity of the employer or a fellow employee or the worker;
8. Whether the injury occurred while the worker was doing something that was part of his job; and,
9. Whether the injury occurred while the worker was being supervised by the employer.

[51] While the issue in this case is not with respect to any injuries suffered by Mr. Chisholm but whether the accident arose out of and in the course of his employment, the foregoing factors are relevant.

[52] I have also considered RSCM II policy item #C3-19.00, "Work-Related Travel," which states the general principle that injuries occurring in the course of travel between a worker's home and the normal place of employment are not compensable. The policy also states:

> … On the other hand, where a worker is employed to travel, injuries or death occurring in the course of travel may be covered. This is so whether the travel is a normal part of the job or is exceptional. In these cases, the worker is generally considered to be traveling in the course of the employment from the time the worker commences travel on the public roadway.

[53] RSCM II policy item #C3-19.00 at Part C, "Traveling Employees," provides that an employment connection generally exists throughout the travel undertaken by travelling employees, subject to any substantial personal deviation from the employment travel. Examples of travelling employees include, but are not limited to, taxi drivers, transportation industry drivers, cable installers, and sales representatives.

[54] Mr. Chisholm's employment as a security system installation project manager is analogous to the work performed by cable installers, since travel between different work locations to perform installation services is a regular part of the services that they both provide. As stated in policy item #C-19.00(C), a worker who typically travels to more than one work location in the course of a normal work day as part of their work duties is considered a "traveling employee."

[55] Since Mr. Chisholm had traveled to his employer's office and then started on his journey to another work location when the accident occurred, and since there is no evidence suggesting that that he had departed on a substantial personal deviation from that journey, I find that he was a travelling employee when the accident occurred.

[56] The accident occurred during Mr. Chisholm's regular work hours, during a period of time for which he was being paid his hourly wage, while he was engaged in travel that was part of his regular job duties, while he was doing something for the benefit of his employer's business, and while he was operating a vehicle provided by his employer. All of these factors support a finding that the accident arose out of and in the course of his employment. While Mr. Chisholm was obviously not on his employer's premises at the time of the accident, this factor is not significant in light of his status as a traveling employee at the time of accident.

[57] I find that any action or conduct of the defendant, Ronald A. Chisholm, which caused the alleged breach of duty of care, arose out of and in the course of his employment within the scope of Part 1 of the Act.

Conclusion

[58] I find that at the time of the February 6, 2013 accident (which is written as February 7, 2013 in the Notice of Civil Claim):

(a) the plaintiff, Gurinder Singh Rai, was not a worker within the meaning of Part 1 of the Act;

(b) the defendant, Ronald A. Chisholm, was a worker within the meaning of Part 1 of the Act; and,

(c) any action or conduct of the defendant, Ronald A. Chisholm, which caused the alleged breach of duty of care, arose out of and in the course of his employment within the scope of Part 1 of the Act.

Guy Riecken
Vice Chair

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Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898

NO. NEW-S-M-164382
NEW WESTMINSTER REGISTRY

IIN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

GURINDER SINGH RAI

PLAINTIFF

AND:

RONALD A. CHISHOLM, FIRST WEST LEASING LTD. and
FIRST CHOICE SECURITY & AUDIO SYSTEMS (2000) LTD.

DEFENDANTS

C E R T I F I C A T E

UPON APPLICATION of the Defendants, RONALD A. CHISHOLM, FIRST WEST LEASING LTD. and FIRST CHOICE SECURITY & AUDIO SYSTEMS (2000) LTD., in this action for a determination pursuant to section 257 of the *Workers Compensation Act*;

AND UPON NOTICE having been given to the parties to this action and other interested persons of the matters relevant to this action and within the jurisdiction of the Workers' Compensation Appeal Tribunal;

AND AFTER an opportunity having been provided to all parties and other interested persons to submit evidence and argument;

AND UPON READING the pleadings in this action, and the submissions and material filed by the parties;

AND HAVING CONSIDERED the evidence and submissions;

THE WORKERS' COMPENSATION APPEAL TRIBUNAL DETERMINES THAT at the time the cause of action arose, February 6, 2013 (which is written as February 7, 2013 in the Notice of Civil Claim):

1. The plaintiff, GURINDER SINGH RAI, was not a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. The defendant, RONALD A. CHISHOLM, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

3. Any action or conduct of the defendant, RONALD A. CHISHOLM, which caused any alleged breach of duty of care arose out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act.*

CERTIFIED this 8th day of November, 2018

Guy Riecken
VICE CHAIR

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DEFENDANTS

SECTION 257 CERTIFICATE

WORKERS' COMPENSATION APPEAL TRIBUNAL
150-4600 Jacombs Road
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TELEPHONE: 604-664-7800

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