

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL**WCAT DECISION DATE:** December 22, 2020**WCAT DECISION NUMBER:** A2000104**WCAT PANEL:** Andrew Waldichuk

RE: Kuldeep Singh Dosanj v. Kit Ling Yau
Vancouver Registry, No. VLC-S-M-164501
Certification to Court Determination
WCAT No. A2000104

Applicant: Kit Ling Yau
(the "Defendant")

Respondent: Kuldeep Singh Dosanj
(the "Plaintiff")

Interested Person: North Shore Taxi (1966) Ltd.

Representatives:

For Applicant: Rajeewa Wijesinghe
ICBC-Litigation Department

For Respondent: Rita Sidhu
Brij Mohan & Associates

For Interested Person: Liana Bujevic
Employers' Advisers Office

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

Introduction

- [1] On February 9, 2015, the plaintiff, Kuldeep Singh Dosanj, was involved in a motor vehicle accident at or near the intersection of Georgia Street and Burrard Street in the City of Vancouver when the taxi he was operating was struck by a motor vehicle owned and driven by the defendant Kit Ling Yau.
- [2] At the time of the accident, the plaintiff was transporting a passenger, whereas the defendant, who was employed as a cleaner, was travelling from a café that she had cleaned to a London Drugs store, where she was to do more cleaning.
- [3] Pursuant to section 311 of the *Workers Compensation Act* (Act)¹, if a court action is commenced based on a personal injury, death, or a disability caused by occupational disease, the Workers' Compensation Appeal Tribunal (WCAT) may be asked by the court or a party to the action to make a determination and to certify that determination to the court.
- [4] Counsel for the defendant initiated this application by letter of January 7, 2020. The defendant seeks determinations regarding her status and that of the plaintiff at the time of the February 9, 2015 accident.
- [5] In view of the related Part 7 action, the Insurance Corporation of British Columbia (ICBC) was invited to participate in this application as an interested person. It has advised WCAT that it is not participating in this application, but it adopts the submissions of defence counsel in the tort action.
- [6] WCAT invited the participation of the following companies and individuals as interested persons: the plaintiff's putative employer, North Shore Taxi (1966) Ltd. (North Shore Taxi); the defendant's putative employer, 7324375 Canada Inc., doing business as Sani-Service; Kit Ling Yau (who is represented by defence counsel in the legal action); and Balwinder Randhawa (the beneficial owner of the taxi involved in the accident). Only North Shore Taxi chose to participate. It is represented by the Employers' Advisers Office.

¹ The Act was reorganized and renumbered under the *Statute Revision Act* (RSBC 1996), c. 440, effective April 6, 2020. In this application, all references to the Act are to the *Workers Compensation Act* (RSBC 2019), c. 1.

- [7] The plaintiff commenced a provisional claim with the Workers' Compensation Board (Board), operating as WorkSafeBC, with respect to the accident. The defendant has an accepted Board claim with respect to the accident. Certain evidence from the claim files of the plaintiff and the defendant have been disclosed to the parties to the legal action and to North Shore Taxi.
- [8] Item #18.1 of WCAT's *Manual of Rules of Practice and Procedure* provides that WCAT will consider all of the evidence and argument afresh in a section 311 application, regardless of a prior decision by a Board officer.
- [9] The plaintiff and the defendant were examined for discovery on February 28, 2019. Copies of the discovery transcripts were provided to WCAT and then disclosed to North Shore Taxi.
- [10] The trial of the legal action is scheduled to commence on March 8, 2021.
- [11] WCAT invited the parties to the legal action, along with North Shore Taxi, to provide written submissions, which were received.
- [12] I find that this application involves questions of law and policy which can be properly considered on the basis of the available evidence and written submissions, without the need for an oral hearing.

Issue(s)

- [13] Determinations are requested with respect to the status of the plaintiff and the defendant at the time of the February 9, 2015 accident.

Jurisdiction

- [14] Part 7 of the Act applies to proceedings under section 311, except that no time frame applies to the making of the WCAT decision (section 311(3)). Pursuant to section 303(1) of the Act, WCAT is not bound by legal precedent. WCAT must make its decision based on the merits and justice of the case, but in so doing, must apply a policy of the board of directors of the Board that is applicable (section 303(2)). Section 308 of the Act gives WCAT 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 7 of the Act, including all matters that WCAT is requested to determine under section 311. The WCAT decision is final and conclusive and is not open to question or review in any court (section 309(1)). The court determines the effect of the certificate on the legal action: *Clapp v. Macro Industries Inc.*, 2007 BCSC 840.

Status of the Plaintiff, Kuldeep Singh Dosanj

- [15] The plaintiff, in his application for workers' compensation benefits, identified North Shore Taxi as his employer. He also indicated that the accident occurred during his normal shift, while he was doing something for his employer's business, and while he was performing his regular duties. After indicating that a base salary was inapplicable to his situation, the plaintiff provided a gross earnings figure of \$11,470 over the three months prior to his injury.
- [16] The plaintiff testified during his examination for discovery that he was driving a (Toyota Prius at the time of the accident (Q 29). It was the vehicle that he normally drove (Q 30). He was working for North Shore Taxi when the accident occurred (Q 32). Furthermore, the plaintiff thought he had been working for North Shore Taxi since 2001 (Q 42).
- [17] The defendant submits that the plaintiff was in an employment relationship with North Shore Taxi at the time of the accident on February 9, 2015. By contrast, the plaintiff takes the position that he was carrying on business as an independent contractor when the accident occurred. Lastly, North Shore Taxi says that the plaintiff was a shift lease operator and therefore an independent operator at the time of the accident.
- [18] Section 1 of the Act contains the following definition:
- “worker”** includes the following:
- (a) a person who has entered into or works under a contract of service or apprenticeship, whether the contract is written or oral, express or implied, and whether by way of manual labour or otherwise;
 - ...
 - (e) an independent operator to whom the compensation provisions apply by the Board direction under section 4(2)(a);
 - (f) a person deemed by the Board to be a worker under section 6(2);
- [19] Section 4(2) of the Act provides that the Board may direct that the compensation provisions apply on the terms specified in the Board's direction to:
- (a) an independent operator who is neither an employer nor a worker as if the independent operator were a worker, or
 - (b) an employer as if the employer were a worker.

[20] Pursuant to section 4(2)(a) of the Act, and item (e) of the definition of the term “worker” in section 1 of the Act, an independent operator who purchases Personal Optional Protection (POP) coverage is considered to be a worker (even though the person would not otherwise be a worker).

[21] Policy item #AP1-1-1 of the *Assessment Manual*², “Coverage under Act – Description of Terms,” provides general descriptions of the following categories of persons:

- *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 the compensation provisions 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 the compensation provisions 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 4(2) of the Act as being an individual “who is neither an employer nor a worker” and to whom the Board may direct that the compensation provisions of the Act apply as if the independent operator were 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

² There are some minor non-substantive changes to the applicable Board policy in this application to reflect the changes to the Act effective April 6, 2020.

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.
- *Principal* – A principal is a person who has the direct or indirect power or ability to control or influence the operations of a corporation or similar entity, through the ownership of voting securities, by contract, or otherwise. An officer, director or shareholder active in the operation of a corporation or similar entity is presumed to be a principal of that firm. However, the Board may find that such a person is not a principal where it is shown that the person does not possess direct or indirect power or ability to control or influence the firm’s operations.

[22] Policy item #AP1-1-5 of the *Assessment Manual*, “Coverage under Act – Workers,” states that workers include individuals not employing other individuals and include those who are paid on an hourly, salaried, or commission basis.

[23] Policy item #AP1-1-3 of the *Assessment Manual*, “Coverage under Act – Distinguishing Between Employment Relationships and Relationships Between Independent Firms,” provides general principles for determining whether a contract to perform work creates an employment relationship or a relationship between independent firms. In doing so, it sets out a number of factors to consider in an effort to distinguish an employment relationship from one between independent firms, such as the degree of control exercised over an individual or the ability to make a profit or loss. Policy item #AP1-1-3 says that the “major test” is whether the individual doing the work has a business existence under the contract independent of the person or entity for whom the work is done. It also provides that “[s]ome regard must also be paid to the structure and customs of the particular industry involved.”

[24] At the time of the February 9, 2015 accident, Board Practice Directive (PD)³ #1-1-3(B), “Status – Specific Occupations,” effective May 1, 2010, provided in paragraph 6:

Through long-established practice, the Assessment Department has recognized that a set of facts unique to a particular industry may infer that an individual exists as a business enterprise independent of a service

³ The Board’s practice directives are available at www.worksafefbc.com

recipient in that industry. In the main, each of the sets of facts below is a rebuttable presumption: that is, if in a particular industry the relevant set of facts is established, a Board officer should find that the “service provider...has a sufficient degree of independence to be an independent operator,” unless the presumption is refuted.

[footnote deleted]

[25] The practice directive further provided:

II TAXI SHIFT LEASE OPERATORS

9. A shift lease operator is an individual operating in the taxi service industry who leases a taxi from another person for a specific period of time for a flat fee – a single fixed fee for a service, regardless of usage – per shift.
10. A shift lease operator operating within the industry defined in the Employer Classification System by Classification Unit 732037 [Taxi Service] will be presumed to be an independent operator if the shift lease operator meets each of the following conditions:
 - a) The shift lease operator is the lessee to a lease arrangement.
 - b) There is no sharing of revenue between the shift lease operator and the lessor.
 - c) The shift lease operator is in a profit and loss situation.
 - d) The lessor exerts no more than minimum control of the shift lease operator’s operations beyond license or regulation restrictions or both license and regulation restrictions.

[26] A January 23, 2020 memorandum from an analyst in the Board’s Audit & Assessment Department confirmed that there was no record of a registration in the plaintiff’s name. North Shore Taxi, however, was registered with the Board at the time of the February 9, 2015 accident.

[27] WCAT is bound by Board policy. Practice directives provide non-binding adjudicative guidance. They also promote consistency in decision-making. At the same time, WCAT panels are not bound by precedent, but the reasoning in prior decisions may provide useful guidance.

[28] I find that PD #1-1-3(B) is of assistance because of the guidance it provides when addressing the status of taxi drivers. Having said that, I am mindful that some panels have raised concern about relying on a practice directive instead of applicable Board

policy (see, for instance *WCAT-2007-00194 (Cheung v. Vikas et al.)*⁴, where the panel, in the context of determining the status of a taxi driver, discussed the significance of practice directives and WCAT's statutory obligation to apply applicable Board policy). The panel's reasoning in *WCAT-2009-01713 (Ahmed v. Canning et al.)*, which addressed *WCAT-2007-00194* and the statement in policy item #AP1-1-3 of the *Assessment Manual* about having some regard to the "customs of the particular industry involved," suggests that the status of a taxi driver may be determined solely on the basis of the four conditions in PD #1-1-3(B)⁵:

[52] A practice directive may provide a means for taking into account the structure and customs of a particular industry. If the initial four criteria in the practice directive are not met, it is necessary to turn to the tests for independence. Accordingly, the effect of the practice directive may be a moot issue in any event.

[29] The submissions of North Shore Taxi contain an analysis in support of the plaintiff being a shift lease operator – and an independent operator having a separate business existence – at the time of the accident. Furthermore, the submissions of the parties to the legal action, although addressing the general principles in policy item #AP1-1-3, provide the framework for an analysis of the evidence using the four conditions in PD #1-1-3(B).

[30] PD #1-1-3(B) offers the following description of a shift lease operator:

...an individual operating in the taxi service industry who leases a taxi from another person for a specific period of time for a flat fee – a single fixed fee for a service, regardless of usage – per shift.

[31] The possibility of the plaintiff being a shift lease operator at the time of the February 9, 2015 accident is supported by certain relevant documents the defendant has provided in this application.

[32] The first is a North Shore Taxi document entitled "Driver Application to Lease Taxicab" with the following handwritten notation at the top of the document: "NEW OWNER OF #62." The application, which was signed by the plaintiff on June 30, 2000, indicated that he preferred to lease the taxicab on a short-term basis.

[33] The second relevant document is a "Memorandum of Agreement" signed by the plaintiff on June 30, 2000. It related to the plaintiff's lease of a "North Shore Taxicab" and

⁴ WCAT decisions are available at www.wcat.bc.ca.

⁵ All quotes are reproduced as written, unless noted otherwise.

set out a number of terms and conditions that the plaintiff had to meet. Paragraph 9 of the document read as follows:

9. The rules and guidelines mentioned above are for the benefit of lease and owner operators alike. It does not constitute an employer/employee relationship.

[34] The third relevant document is an undated lease agreement between North Shore Taxi, an unidentified owner (shareholder in North Shore Taxi), and the plaintiff, as the “Lessee Operator.” It was only signed by a representative of North Shore Taxi. The agreement stipulated that the lessee was self-employed for the purpose of the agreement, not an employee of North Shore Taxi, an independent contractor, and leasing a taxicab for business purposes. A number of terms and conditions were also imposed upon the lessee, including the following:

- 14.) will be responsible for and pay the appropriate lease rate for any booked shift, unless 48 hours notice is received by the Supervisor;

...

- 18.) is aware that the lease available may be for a shift, a day, a week, a month, or for a longer period of time;

...

- 21.) is aware that the posted lease rate may be changed at any time.

[35] The final relevant document is a July 5, 2000 dispatch agreement between North Shore Taxi (identified as “the Company”) and the plaintiff (identified as “the owner”). This document suggested that the plaintiff owned shares in North Shore Taxi. Moreover, paragraph 7.1 of the agreement said that the owner was to register all operating automobiles in the name of North Shore Taxi, with North Shore Taxi holding title to the operating automobiles in trust for the owner, for the purpose of fleet insurance coverage with ICBC.

[36] Consistent with paragraph 7.1 of the July 5, 2000 dispatch agreement, the plaintiff submits that the Toyota Prius taxi involved in the accident was registered in the name of North Shore Taxi. However, the beneficial owner of the taxi was Balwinder Randhawa. According to the plaintiff, prior to the accident, he ceased being an “owner/lessee operator” and gave up his shares in North Shore Taxi. He became a driver only. The plaintiff paid a fixed daily lease of \$85 to Mr. Randhawa, who held shares in North Shore Taxi. Mr. Randhawa drove the taxi during the night shift and the plaintiff “did the day shift.” The plaintiff was responsible for fuel, whereas Mr. Randhawa was responsible for dispatch fees, insurance, and vehicle repairs.

- [37] The information mentioned above with respect to the plaintiff leasing the taxi from Mr. Randhawa was based on a telephone interview between the plaintiff and his counsel. It would have been preferable to have received this evidence by means of an affidavit or at least a written statement from the plaintiff. I recognize that the current global pandemic under which we find ourselves has imposed certain impracticalities in terms of in-person meetings. I therefore accept the evidence of the plaintiff, as conveyed by his counsel. In saying so, I note that the defendant does not take issue with the plaintiff's evidence or how it was presented.
- [38] Based on the plaintiff's evidence and the documentation provided by the defendant in this application, I find that the plaintiff had entered into a lease arrangement with Mr. Randhawa by the time of the February 9, 2015 accident and was therefore a shift lease operator, as envisioned by PD #1-1-3(B).
- [39] For it to be presumed that the plaintiff was an independent operator when the accident occurred, he had to meet various conditions under PD #1-1-3(B). The first condition is that the shift lease operator is the lessee to a lease arrangement.
- [40] It is unknown to what extent, if any, the lease agreement between the plaintiff and Mr. Randhawa was based on the undated lease agreement that the defendant has provided in this application. Nonetheless, while recognizing that a lease agreement may be written or oral, I find, based on the plaintiff's evidence and the June 30, 2000 North Shore Taxi application to lease a taxicab, that the plaintiff was likely a lessee to a lease arrangement with Mr. Randhawa at the time of the accident.
- [41] The second condition under PD #1-1-3(B) is that there be no sharing of revenue between the shift lease operator and the lessor.
- [42] I am aware of *WCAT-2014-00368 (Singh v. Aliy and Black Top Cabs Ltd.)*, in which the panel provided a detailed analysis of fluctuating daily lease rates in terms of the requirement in PD #1-1-3(B) with respect to no revenue sharing. At paragraph 54, the panel reasoned as follows:
- [54] In summary, the reasoning in the prior WCAT decisions cited above involved a valid concern as to whether such fluctuating daily rates amount to a form of revenue sharing between the shift lease operator and the lessor. Nevertheless, I find that the practice directive is framed to prohibit actual revenue sharing, rather than the setting of flat rates which vary according to certain conditions such as the day of the week (without regard to the actual revenue being generated by the driver). ...
- [43] I raise this because of paragraph 21 in the lease agreement that was provided in this application. Paragraph 21 advised the lessee that the posted lease rates may be

changed at any time. On the other hand, it is the plaintiff's evidence that he paid a fixed daily lease of \$85 to Mr. Randhawa, which I accept. As such, I distinguish *WCAT-2014-00368* from this matter on the basis that the plaintiff was not subjected to variable lease rates.

- [44] The plaintiff says that he was not obligated to report his earnings to Mr. Randhawa or to North Shore Taxi, and the defendant has not provided any compelling evidence to the contrary. As such, I find there was no sharing of revenue between the plaintiff and Mr. Randhawa or North Shore Taxi.
- [45] The third condition under PD #1-1-3(B) is that the shift lease operator be in a profit and loss situation.
- [46] The defendant, for purposes of policy item #AP1-1-3 of the *Assessment Manual*, submits that while it does not appear that the plaintiff was paid an hourly rate, his ability to make a profit or loss was "integrally tied to the dispatch services of North Shore Taxi, which North Shore Taxi could suspend."
- [47] The plaintiff submits that he was free to work as many or as few hours as he wished, in accordance with the National Safety Code hours of service legislation. He maintains that he bore the risk of profit or loss. His compensation was based on the amount of work he wished to do.
- [48] To support his position, the plaintiff has provided income tax documentation for 2015 and 2016, which shows that he declared gross and net business income during those years. Also provided was a Taxi Driver's Agreement, which the plaintiff signed on January 17, 2019. One of the requirements mentioned in that document was to pay the lease to the owner, on a daily basis, by dropping the lease payment into the company safe after the shift was finished. If the lease was not paid, North Shore Taxi had the right to deduct the unpaid lease from the plaintiff's security deposit. I accept that the plaintiff was subject to a risk of profit and loss, since he was liable for the shift lease payment regardless of how much revenue he generated during his shift.
- [49] Also supportive of the plaintiff being in a profit or loss situation is the earnings information that the defendant provided for the purposes of this application. It shows that the plaintiff's "payouts" from North Shore Taxi from September 16, 2014 to August 8, 2015, for the most part, were never the same. That evidence, coupled with the fact that the plaintiff was responsible for Canada Pension Plan contributions, as confirmed by the unsigned lease agreement and the plaintiff's income tax documents for 2015 and 2016, persuades me that whether the plaintiff was in a profit or loss situation by leasing Mr. Randhawa's taxi depended on the amount of time he drove the taxi and the amount he earned in doing so.

- [50] The fourth condition under PD #1-1-3(B) is that the lessor exerts no more than minimum control of the shift lease operator's operations beyond license and/or regulation restrictions.
- [51] The defendant, in addressing North Shore Taxi's control over the plaintiff, for the purposes of policy item #AP1-1-3, highlights how North Shore Taxi was responsible for dispatch services and dictated matters over the plaintiff's appearance, such as being properly dressed and keeping his beard neat and trimmed. Furthermore, the defendant says that North Shore Taxi could mandate the plaintiff to take a defensive driving course if his driving performance warranted it and limit his use of the Prius taxi to 40 hours a week. As well, according to the defendant, North Shore Taxi could stipulate when the plaintiff needed to return the Prius taxi to its place of business.
- [52] The plaintiff, on the other hand, submits that North Shore Taxi's degree of control over him was low. For instance, the plaintiff submits that his hours of work would have to comply with the National Safety Code hours of service legislation, not necessarily with the maximum hours set by North Shore Taxi. Moreover, the plaintiff claims that he was free to decline dispatched fares and could pick up flagged fares, such that North Shore Taxi did not tell him where to go for his next paid work. It is also the plaintiff's position that North Shore Taxi has never dictated his appearance, as he has a long-flowing beard.
- [53] In addition, the plaintiff cites the following passage from *WCAT-2014-00368*, where the panel, in dealing with the fourth condition under PD #1-1-3(B), reasoned as follows:
- [56] ...The taxi industry is highly regulated pursuant to the *Passenger Transportation Act*, [S.B.C. 2004] c. 39, and municipal by-laws. For example, section 38 of the *City of North Vancouver Cab Regulation Bylaw, 1970*, requires that daily trip sheets be maintained and deposited with the taxi company at the end of each shift. Section 33 requires that taxi drivers be "neatly and properly dressed." A requirement that trip sheets be deposited with the taxi company is, therefore, the result of a regulatory requirement rather than providing an indication of control by the taxi company. I am not persuaded that the controls placed on the plaintiff by North Shore Taxi or Deol went beyond such requirements to such an extent as to support a finding that the plaintiff was a worker.
- [54] Besides stating that he was driving Balwinder Randhawa's taxi at the time of the accident, and would occasionally drive the taxis of other owner/lessee operators as well, the plaintiff submits that North Shore Taxi could not stipulate when he returned the Prius taxi to its place of business. Rather, Mr. Randhawa was responsible for returning the Prius taxi to North Shore Taxi as needed. Moreover, according to the plaintiff, he would

often pick up the Prius taxi at Mr. Randhawa's residence and Mr. Randhawa would pick it up when it was time for the night shift.

- [55] In reply, the defendant submits that there is no evidence that the plaintiff drove other taxis for a company beyond North Shore Taxi. The defendant also points to the non-competition clause in the July 5, 2000 dispatch agreement, which forbade the owner (under the agreement) from carrying on or engaging in the operation of a taxicab business.
- [56] The document that clearly illustrates any control on the part of North Shore Taxi is the June 30, 2000 Memorandum of Agreement that the plaintiff presumably signed when he completed the "Driver Application To Lease Taxicab" on the same day. The plaintiff submits that the Memorandum of Agreement did not apply to him at the time of the accident because it related to "owner/lessee operators." Yet, I accept that the Memorandum of Agreement likely applied to the plaintiff, owing to the statement in paragraph 9 that the rules and guidelines mentioned in the document were "for the benefit of lease and owner operators alike." The key point, however, is that it likely applied to Mr. Randhawa, too.
- [57] In *WCAT-2015-00268 (Pooni v. Soo et al.)*, the plaintiff had entered into a lease arrangement with an individual by the name of Mr. Khatkar to operate a taxi. The following is an excerpt from *WCAT-2015-00268* with respect to the degree of control that Mr. Khatkar or the cab company exerted over the plaintiff, as contemplated by PD #1-1-3(B):
- [49] The arrangement between the plaintiff and Mr. Khatkar was verbal. Neither the plaintiff's discovery evidence nor the evidence from Mr. Khatkar and Mr. Land persuades me that the plaintiff, as a shift lease operator, was subject to any different policy and procedure beyond that outlined in Pacific Cabs' manual. For instance, there is no indication the plaintiff was required to report his hourly taxable income to Mr. Khatkar or Pacific Cabs or generate enough earnings to keep his hourly income above the provincial minimum wage. Rather, by all accounts, the arrangement between the plaintiff and Mr. Khatkar was quite informal, besides the plaintiff having to comply with Pacific Cabs' policy and procedure.
- [50] The fact that Pacific Cabs' manual seems to apply to owner operators, lease operators, and drivers leads me to conclude it has a broad application and is based primarily on legislative requirements, some insurance considerations, and the application of common sense and business sense when dealing with such things as loading and unloading passengers, and the importance of customer satisfaction. I find any control that Mr. Khatkar or

Pacific Cabs had over the plaintiff was no more than minimum control over his operations beyond license and/or regulation restrictions.

- [58] Borrowing the language from *WCAT-2015-00268*, I find that the rules and guidelines in the Memorandum of Agreement that the plaintiff signed on June 30, 2002 had “broad application” in that they were for “the benefit of lease and owner operators alike.” I have also considered the rules and guidelines imposed on the plaintiff because of the June 30, 2000 Memorandum of Agreement, as well as the Taxi Driver’s Agreement that he signed on January 17, 2019, with respect to such things as hours of work, reporting accidents to North Shore Taxi, being courteous to customers, not driving while intoxicated, and being dressed in a presentable manner. Consistent with *WCAT-2014-00368* and *WCAT-2015-00268*, I accept that the rules and guidelines that were imposed upon the plaintiff stemmed, in part, from legislative and regulatory requirements, insurance considerations, and the general need to foster business for North Shore Taxi and the individuals who operated taxis under the company name of North Shore Taxi.
- [59] Moreover, while mindful that the fourth condition under PD #1-1-3(B) requires me to consider the control of the lessor – Mr. Randhawa in this case – over the shift lease operator’s operations, the absence of any compelling evidence that North Shore Taxi’s rules and guidelines were incorporated into any oral or written lease agreement between the plaintiff and Mr. Randhawa undermines any suggestion that Mr. Randhawa exerted a degree of control over the plaintiff beyond the parameters that North Shore Taxi had set for its lease and owner operators.
- [60] Contrary to the defendant’s argument, I give little weight to the evidence about North Shore Taxi’s responsibility for dispatch services. This would include, for instance, such matters as the requirement that the taxi be at the disposal of the company 24 hours a day (paragraph 7.7 of Dispatch Agreement), as evidenced by Mr. Randhawa working the night shift and the plaintiff working the day shift. I find that the Dispatch Agreement did not reflect any specific control that Mr. Randhawa had over the plaintiff. Having said that, I consider the defendant’s argument about the non-competition clause in the Dispatch Agreement applying to the plaintiff to be of no assistance when addressing control, since it is the plaintiff’s evidence that he had given up his shares in North Shore Taxi before the accident, meaning he was no longer an “owner” under the agreement. At the same time, I note the absence of any compelling evidence that Mr. Randhawa required the plaintiff to report his earnings to him or had much control over the plaintiff’s operation of the Prius taxi, such as a particular gas station that was supposed to be used for re-fueling purposes.
- [61] I find that the four conditions in PD #1-1-3(B) are met in this case. The rebuttable presumption of independence is applicable in relation to the determination of the plaintiff’s status. I find that this presumption is not rebutted.

- [62] The plaintiff did not elect to purchase POP coverage. Therefore, he was not a worker within the meaning of item (e) of the definition of the term “worker” in section 1 of the Act. For the reasons set out above, I find that the plaintiff was an independent operator, and not a worker within the meaning of the compensation provisions of the Act at the time of the February 9, 2015 accident.
- [63] Since the plaintiff was not a worker within the meaning of the compensation provisions of the Act, it necessarily follows that his injuries in the accident on February 9, 2015 did not arise out of and in the course of employment within the scope of the compensation provisions of the Act.
- [64] Given my conclusion regarding the status of the plaintiff, it does not appear necessary to address the status of the defendant. I have therefore restricted my certification to the status of the plaintiff. If further certification regarding the status of the defendant remains necessary to the legal action, counsel may notify WCAT and the request will be addressed on an expedited basis.

Conclusion

- [65] I find that at the time of the accident on February 9, 2015:
- (a) The plaintiff, Kuldeep Singh Dosanj, was not a worker within the meaning of the compensation provisions of the Act; and
 - (b) The injuries suffered by the plaintiff, Kuldeep Singh Dosanj, did not arise out of and in the course of employment within the scope of the compensation provisions of the Act.

Andrew Waldichuk
Vice Chair

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 2019, 205 1, AS AMENDED

BETWEEN:

KULDEEP SINGH DOSANJ

PLAINTIFF

AND:

KIT LING YAU

DEFENDANT

C E R T I F I C A T E

UPON APPLICATION of the Defendant, KIT LING YAU, in this action for a determination pursuant to section 311 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 9, 2015:

1. The Plaintiff, KULDEEP SINGH DOSANJ, was not a worker within the meaning of the compensation provisions of the *Workers Compensation Act*.
2. The injuries suffered by the Plaintiff, KULDEEP SINGH DOSANJ, did not arise out of and in the course of employment within the scope of the compensation provisions of the *Workers Compensation Act*.

CERTIFIED this 22nd day of December 2020.

Andrew Waldichuk
VICE CHAIR

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 2019, CHAPTER 1, AS AMENDED

BETWEEN:

KULDEEP SINGH DOSANJ

PLAINTIFF

AND:

KIT LING YAU

DEFENDANT

SECTION 311 CERTIFICATE

WORKERS' COMPENSATION APPEAL TRIBUNAL
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