

**Workplace Safety and Insurance Appeals Tribunal**

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**Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents du travail**

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**WORKPLACE SAFETY AND INSURANCE  
APPEALS TRIBUNAL**

**DECISION NO. 401/21**

**BEFORE:** G. Dee: Vice-Chair

**HEARING:** March 16, 2021 at Toronto  
Oral by Videoconference

**DATE OF DECISION:** March 19, 2021

**NEUTRAL CITATION:** 2021 ONWSIAT 433

**APPLICATION FOR ORDER UNDER SECTION 31 OF THE *WORKPLACE SAFETY AND INSURANCE ACT, 1997***

**APPEARANCES:**

**For the applicant:** N. Rosenthal, Lawyer

**For the co-applicants:** A. Cole, Lawyer

**For the respondent:** T. Long, Lawyer

**Interpreter:** N/A

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## REASONS

### (i) Introduction

[1] Intact Insurance Company has applied under section 31 of the *Workplace Safety and Insurance Act, 1997* (the Act) for a determination that the respondent Mr. D. Singh is entitled to claim benefits under the Act for injuries sustained in an accident occurring on October 13, 2017.

[2] The co-applicants Gold Freight Corporation and I. Grewal have also applied under section 31 of the Act, for a determination that the respondent's right to bring the civil action that he has commenced with court file number CV-118-1476-00 is taken away by the Act.

[3] The applicant and co-applicants have filed written submissions and evidence in this application. The respondent has not filed written materials. The respondent's representative has indicated in oral submissions that the respondent takes no position in these proceedings.

### (ii) Analysis

[4] The orders requested by the applicant and co-applicants are to be granted.

[5] It is not disputed that the respondent was an Ontario resident working in the transportation industry at the time of the accident. Transcript of examination for discovery of D. Singh, page 6.

[6] The transportation industry is mandatorily covered under Schedule 1 of the Ontario workers' compensation system whether or not an employer applies for or is current with its payments for workers' compensation coverage. Schedule 1, Class E of Ontario *Regulation 175/98* as it read on October 13, 2017. See *Decision Nos. 1003/13* and *2053/14* for example.

[7] At the time of the accident the respondent was assisting in the transportation of goods in a truck in which he had travelled from Ontario to British Columbia for that purpose. Transcript of examination for discovery of I. Grewal pages 20 and 21.

[8] The applicant Intact Insurance Company is an insurer from whom statutory accident benefits have been claimed under section 268 of the *Insurance Act* and has standing to bring the application that it has.

[9] If the respondent was a worker at the time of the accident he is therefore entitled to workers' compensation benefits under the Act in accordance with the provisions of subsection 19(4) of the Act and the applicant is entitled to the order it is seeking to that effect.

19(4) If the accident happens outside of Ontario on a train, an aircraft or a vessel or on a vehicle used to transport passengers or goods, the worker is entitled to benefits under the insurance plan if he or she resides in Ontario and is required to perform his or her employment both in and outside of Ontario.

[10] The co-applicant Gold Freight Corporation was a Schedule 1 employer at the time of the accident. Status check result from WSIB February 13, 2020.

[11] The co-applicant I. Grewal was either a Schedule 1 employer, or an executive officer of a Schedule 1 employer, or a worker of a Schedule 1 employer at the time of the accident. The transcript of the examination for discovery of I. Grewal indicates that he was a partner in owning trucks and running his own trucking business with his brother. He was also working alongside the plaintiff at the time of the accident. The February 13, 2020 status check from the WSIB

indicates that the company that I. Grewal had an interest in and that provided cheques to the respondent for his services, Manjas Enterprises Inc., became inactive as a Schedule 1 employer with the WSIB a few weeks prior to the accident. However, the business of trucking is mandatorily covered and there is no scenario in which Mr. Grewal was not either the employer, an executive officer of the employer, or a worker of the employer in the mandatorily covered business that was responsible for paying the respondent for his services.

[12] If the respondent was a worker at the time of the accident his right of action in respect of his accident for which he could claim Ontario workers' compensation benefits is therefore taken away against both of the co-applicants by subsection 28(1) of the Act, and the co-applicants are entitled to the order that they are seeking.

**28(1)** A worker employed by a Schedule 1 employer, the worker's survivors and a Schedule 1 employer are not entitled to commence an action against the following persons in respect of the worker's injury or disease:

1. Any Schedule 1 employer.
2. A director, executive officer or worker employed by any Schedule 1 employer.

[13] The circumstances surrounding the payment of the respondent for his services in assisting to transport goods were described in the transcript of his examination for discovery. Those circumstances have some features that might indicate that the respondent's status at the time of the accident was as an independent operator and not a worker. Most notably the respondent possessed his own numbered company that received payment for his services and he was paid without deductions for the services he provided.

[14] However, those features indicative of independent operator status are overwhelmed in my view by the other features of the respondent's circumstances that indicate that the respondent was in an employment relationship with Mr. Grewal and Manjas Enterprises Inc. at the time of the accident. Those circumstances, that the respondent himself described in his examination for discovery, include the fact that the respondent did not own any of the equipment, truck or trailer, that was being used to deliver goods. The respondent had no say over what deliveries were made and he could not refuse work that was assigned to him. The respondent was paid for his services solely based upon the number of miles that he drove. This is also made clear in the pay stubs submitted into evidence and that are contained at Tab 5 of the Applicant's section 31 statement.

[15] There is a very large amount of case law at the Tribunal dealing with the worker/independent operator issue in general, and in the trucking industry in particular. The case law indicates that there are a large number of factors that might conceivably be taken into consideration when determining how to categorize a relationship as being an employment relationship or an independent operator relationship.

[16] Incorporation of a business is one of the factors to be considered in making this determination. It is, however, not determinative of worker/independent operator status and it is the substance of the relationship and not its form that is determinative. See for example *Decision No. 147/09* that, like many other Tribunal decisions, contains an extensive analysis of the case law governing the worker/independent operator issue and the factors that govern the determination.

[17] I will not review the case law that is reviewed in *Decision No. 147/09* in detail in this decision as in my view the appropriate outcome of the application does not involve a close judgement or nuanced balancing of evidence and the accepted criteria. Aside from the fact that the respondent was incorporated and there were no deductions made from his pay, the clear balance of all of the other evidence indicates that the respondent was a worker and not an independent operator at the time when the accident of October 13, 2017 took place.

[18] The respondent had no say in the work he performed or how he performed it. He could not refuse work. He did not own any of the equipment required to perform his work. He did not bear any of the operational costs in relation to the work he performed. He did not perform work for any other individual or company. He was paid solely in direct proportion to the amount of work he performed. He had no opportunity for profit and was at no risk of financial loss.

[19] The respondent must therefore be regarded as having been a worker at the time that the accident took place and the determinations requested by the applicant and the co-applicants are therefore to be granted.

**DISPOSITION**

[20] The determination requested by the applicant is granted.

[21] The respondent, D. Sing, is entitled to claim benefits under the *Workplace Safety and Insurance Act, 1997* in respect of his accident that took place on October 13, 2017.

[22] The determination requested by the co-applicants is also granted.

[23] The right of the respondent, D. Sing, to initiate an action against the applicants in court file number CV-118-1476-00 as a result of the injuries he sustained on October 13, 2017 is taken away by the *Workplace Safety and Insurance Act, 1997*.

[24] The respondent may make a claim for workers' compensation benefits following this decision within the time limits provided for in subsections 31(4) and (5) of the WSIA.

DATED: March 19, 2021

SIGNED: G. Dee