

Docket: 2002-3512(EI)

BETWEEN:

SURJIT SINGH NAGRA,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

---

Appeal heard on common evidence with the appeals of *Surjit Singh Nagra* (2002-3513(EI)) and *Kulwant Singh Nagra* (2002-4251(EI)) on April 7, 2003 at Kelowna, British Columbia,

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:           The Appellant himself

Counsel for the Respondent:       Raj Grewal

---

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 18th day of July 2003.

\_\_\_\_\_  
"D.W. Rowe"

Rowe, D.J.

Citation: 2003TCC497  
Date: 20030718  
Docket: 2002-3512(EI)

BETWEEN:

SURJIT SINGH NAGRA,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

AND

2002-3513(EI)

SURJIT SINGH NAGRA,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

MANDEEP KAUR NAGRA,

Intervenor,

AND

2002-4251(EI)

KULWANT SINGH NAGRA,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

### **REASONS FOR JUDGMENT**

**Rowe, D.J.**

[1] The appellant, Surjit Singh Nagra (Nagra or payor) appeals from a decision – dated August 27, 2002 - issued by the Minister of National Revenue (the "Minister") wherein it was decided the employment of Kulwant Singh Nagra (Kulwant Nagra or

worker) from January 4, 2001 to October 29, 2001, was not insurable pursuant to the relevant provisions of the *Employment Insurance Act* (the "Act") because Nagra and the worker were not dealing at arm's length. The Minister, after reviewing the circumstances of the employment, was not satisfied the parties would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length.

[2] The Minister also issued a decision – dated August 27, 2002 – wherein it was determined that the employment of Mandeep Kaur Nagra (Mandeep Nagra) from January 4, 2001 to October 29, 2001 was not insurable pursuant to the *Act* because she and Nagra were not dealing with each other at arm's length and the Minister was not satisfied they would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length. Mandeep Nagra intervened in Nagra's appeal from said decision.

[3] Kulwant Singh Nagra appealed from the decision of the Minister – dated August 27, 2002 – concerning his employment with Nagra during the relevant period.

[4] Counsel for the respondent, both appellants and the intervenor agreed all appeals could be heard on the basis of common evidence.

[5] Surjit Singh Nagra testified he is the owner of a 20-acre apple and pear orchard in Kelowna, British Columbia. Kulwant Nagra is his nephew and Mandeep Nagra – the intervenor - is his nephew's wife and they lived in the same residence as Nagra and his family. Nagra stated Kulwant Nagra and Mandeep Nagra came to Kelowna in 1997 and – subsequently – both have worked for him - either part time or full time - at the orchard. On January 25, 2001, Nagra stated he left Kelowna to spend some time in Vancouver prior to departing for India on a vacation extending to March 25, 2001. Because of the length of his absence, he hired both Kulwant Nagra and Mandeep Nagra to manage the orchard and to undertake whatever work was necessary in order to maintain the property and to prepare it for the forthcoming growing season. Both workers were paid at the rate of \$10 per hour. Nagra stated the usual rate of pay within the industry was \$8 per hour for the first year but an experienced worker would receive \$9 per hour. Between January and March, pruning and raking was required and Nagra stated the workers could choose their own working hours but were instructed to record their time on a sheet which was presented to him following his return. Nagra received rent from another property and Kulwant Nagra and Mandeep Nagra also paid rent to Nagra in respect of their tenancy in his house. Each month, the tenant on the orchard property paid cash rent in the sum of \$600 and Kulwant Nagra and Mandeep Nagra used these funds to pay wages to themselves during Nagra's

absence. Later, they were paid by cheque and also in cash, and - in acknowledgment - receipts – Exhibit A-1 – were obtained by Nagra. A bundle of cancelled cheques paid to the workers was filed as Exhibit A-2. Various monthly bank statements on Nagra's business account at a Kelowna Scotiabank branch were filed as Exhibit A-3. Nagra stated that during the months of January and February, he performs much of the work on his own but also hires one to three workers, as required. During the relevant period, Nagra stated he had – on occasion - requested his workers to delay cashing their pay cheques until he was able to put enough money into the business account. After Nagra's return to the property at the end of March, the hourly wage paid to Kulwant Nagra and Mandeep Nagra was reduced to \$9 because they no longer had to exercise any management functions. Both had been employed by Nagra during each growing season from 1997 through 2002, sometimes only on a part-time basis or, if full time, then only during a certain part of the season. Nagra stated Kulwant Nagra and Mandeep Nagra each preferred to work elsewhere but if no other jobs were available, they would work at his orchard if their services were required. He stated he had not displaced another worker merely to provide one or both of them with a job. The process of thinning was carried out during the months of July and August whereas September and October were devoted to picking 6 or 7 varieties of apples that matured at different times. One type of pear was picked before any of the apples and another variety of pear was harvested in the middle of the apple-picking season. Typically, the end of the season requires approximately one week of cleanup and this work – usually - is carried out by two or three people. Nagra referred to time sheets – Exhibit A-4 and Exhibit A-5 – pertaining to Mandeep Nagra and Kulwant Nagra, respectively. During the months of January and February, 2001, Kulwant Nagra worked for Nagra on a relatively full-time basis because he was working a reduced week at the sawmill operated by Louie Russo Sawmills (1998) Ltd. (Louie Russo Sawmills) During the summer months, Kulwant Nagra worked more hours at the sawmill and was able to work at the orchard – generally – on weekends or during evenings. During the period from April 9 to July 2, 2001, Mandeep Nagra worked for other employers and did not provide Nagra with any services whatsoever. Nagra explained that during a busy picking season, there may be 15-20 workers on site but some may work only a few hours or a couple of days before requesting their pay and then leaving. Nagra stated he locates workers by posting notes at a local society or by placing an advertisement in a local newspaper. In addition, he receives numerous telephone calls from people looking for work. Nagra stated he was aware the Agricultural Compliance Team (ACT) had visited his orchard but cannot recall whether he and/or Kulwant Nagra had been on the property because the worker may have been operating a tractor on another part of the property. Nagra stated that subsequent to his return to the orchard on March 25, 2001, he was aware of the identity of each worker and their location - every day - until the end of October.

Although all other workers had been laid off – earlier - at the end of the picking season, Kulwant Nagra and Mandeep Nagra continued to work until October 29, 2001. Nagra reiterated the only reason he paid Kulwant Nagra and Mandeep Nagra the sum of \$10 per hour was that they were experienced workers and had carried additional responsibilities during his extended absence during the winter months. Later, they received the sum of \$9 per hour, the same rate as any other non-related experienced worker. Nagra stated the labour force within the orchard industry is extremely mobile and – after two summers - most workers do not choose to continue in that occupation. The two workers involved in the within appeals – and their parents – were the only workers related to Nagra and when labour was required he would consult a list of interested persons and contact them by telephone to determine whether they were still looking for work. On occasion, people were hired on a piecework basis to carry out a specific function during a limited period.

[6] In cross-examination, Surjit Singh Nagra stated Kulwant Nagra and Mandeep Nagra – in 1997 - began living in his house together with his wife and children and his parents. In 2000, Kulwant and Mandeep Nagra moved to a suite in the basement. In 2002, Kulwant Nagra's parents arrived from India and currently live with him. Kulwant and Mandeep Nagra had a child that was cared for by Nagra's wife and/or parents. Nagra stated most workers were paid by cheque but if they had only worked a few hours, they were paid in cash. Nagra identified the payroll record entitled Paystub Detail – Exhibit R-1 – pertaining to the operation of his orchard business during 2001. Following his return from holidays, Nagra stated he paid the balance of wages owing to both workers in order to make up the difference between their actual wage entitlement and the amount retained after collecting rent money from the tenant. According to the payroll record created by a self-employed accountant retained by Nagra, Kulwant Nagra earned the sum of \$10,926.50 from his employment with Nagra in 2001. Counsel suggested to Nagra that a calculation of the amounts of the various cheques paid to Kulwant Nagra together with the sums indicated in the receipts signed by him, did not add up to the sum shown on said payroll record. Nagra stated he had no explanation for any discrepancies - if they exist - in relation to either or both workers. The time sheets for the workers pertaining to the months of January, February and March, 2001 were completed by Nagra following his return from India and copies were faxed by him to Canada Customs and Revenue Agency (CCRA) but since these records are not the same as his own daily records, Nagra admitted there may be some discrepancies between the two sets of documents. The workers completed their own applications for employment insurance (EI) benefits. Nagra stated he does not allow any person to work more than 9 or 10 hours per day and no work is carried out at night.

[7] The intervenor did not cross-examine.

[8] Kulwant Nagra testified he is a production worker living in Kelowna, B.C. and had begun working for Nagra on January 4, 2001, at the rate of \$10 per hour. He worked at Louie Russo Sawmills between February 20 and August 31, 2001 and referred to his pay stubs from his employment (Exhibit A-6). At the Nagra orchard, he worked at pruning during the early part of the year and then picked fruit as the growing season progressed. He stated his understanding of his pay rate was that he received the sum of \$9 per hour for ordinary work and \$10 per hour for "heavier" work. His usual hours of work at the sawmill - located within a 5-minute drive from the Nagra orchard - were from 7:00 a.m. to 3:15 p.m., Monday through Friday. His rate of pay was \$10 per hour and - usually - he was able to work a full day, although there were a couple of occasions when he was sent home after only part of a regular shift. Kulwant Nagra stated he had worked in previous years for Nagra - Uncle Surjit - and had always maintained his own time records by marking hours on a calendar. Later, this information was transferred to a time sheet. During the relevant period, Kulwant Nagra and Mandeep Nagra were paying Nagra the sum of \$500 rent and other renters - living in a separate house on the same property - paid \$600 per month rent which Kulwant Nagra collected on Nagra's behalf during the months of February and March, 2001, and applied towards wages owed to himself and his wife. Kulwant Nagra stated he recalled members of ACT visiting one of the three orchards operated by Nagra but he had always worked only at the home orchard. Kulwant Nagra stated he was satisfied Nagra had paid him - by cash and/or cheques - the full amount of wages earned during the relevant period. He referred to the time sheets - Exhibit A-7 - containing entries of hours worked by himself and Mandeep Nagra from January 4 until April 9, 2001, but in the following months, Mandeep no longer worked at the orchard because the raking and pruning had been completed and she could not drive the tractor or move heavy irrigation lines. The time sheets - Exhibit A-4 - indicated Mandeep Nagra did not work at the orchard in May and/or June but was employed by Nagra in July, then laid off for the entire month of August and hired again in September. Nagra also kept track of hours worked by Kulwant Nagra and Mandeep Nagra and met with them in order to ensure his record of hours matched their own prior to paying their wages for a particular period.

[9] In cross-examination, Kulwant Nagra acknowledged the time sheets - Exhibit R-2 - were the originals prepared by Nagra and stated he had provided CCRA with copies of hours worked at the sawmill. He confirmed he had never been paid more than \$10 per hour for any work performed for Nagra and when paid in cash had always signed the receipts comprising Exhibit A-1. When he needed funds, Nagra would pay him a certain amount in cash and that payment would be acknowledged by

a signed receipt. During February and March, 2001, Kulwant Nagra stated he had collected a total of \$1,200 rent from the tenant and the rent owed to Nagra for those two months by himself and Mandeep Nagra amounted to \$1,000. As a result, these two sums were taken into account when calculating the balance of money owed for wages following Nagra's return to the farm on March 25, 2001. Kulwant Nagra identified his application – Exhibit R-3 – dated November 15, 2001 for unemployment benefits and agreed his rate of pay stated therein was \$9 per hour. He agreed he had – on occasion – earned \$10 per hour in the early part of the year or an equivalent amount when paid on a piecework basis but the usual rate was \$9 per hour. He stated he had never worked at the orchard and at the sawmill on the same day at any time during the relevant period. He could not recall - for certain - whether he had received cash from Nagra after his return from India but thought he may have received some amount of accumulated wages in that form.

[10] Mandeep Nagra testified she is the wife of Kulwant Nagra and started working - with her husband - for Uncle Surjit in January, 2001. They worked on their own nearly every day in return for an hourly wage of \$10. Because they always worked together, her time was recorded by her husband. Following Nagra's return from India, their pay was reduced to \$9 per hour. While working for Nagra from January 4 to April 9, 2001, Mandeep Nagra stated she had also worked - from midnight to 4:00 a.m., 4 days per week – as a cleaner for Amco Commercial (Amco), a janitorial service, and had been paid a monthly salary for her services. Her son – born in 1999 – had the benefit of child care during the day and was looked after by her husband during the night. Although her husband handled the bookkeeping and recording of hours worked and wages received, she stated she was satisfied Nagra had paid her in full for all work performed. In 2001, she had done pruning work on the home orchard but the picking had been done on two or three other orchards operated by Nagra. Beginning in 1997, she had worked for Nagra in each of the previous years.

[11] In cross-examination, Mandeep Nagra stated she recalled a visit by ACT to the Scotty Creek orchard during which she had informed a member of the inspection team that it was her first day of work – raking - on that property. She explained that statement was correct but had worked previously – pruning - for Nagra at the home orchard. The task of raking – by hand - is carried out in April and usually occupies about two weeks after the pruning - undertaken in January, February and March - has been completed. She stated she was unaware of the identity of workers who carried out pruning on Nagra's other orchards and does not know whether Kulwant Nagra arranged for workers to carry out that task on those other properties. She agreed she used the \$9 per hour pay rate when completing her application for EI benefits even though she had earned \$10 per hour in the winter months and had considered the

piecework payment was equivalent to \$10 per hour. She left her employment with Amco and completed the appropriate form – Exhibit R-4 – when applying for benefits based on voluntary separation. The reason for quitting her job – on August 31, 2001 - was stated therein as "no child care". In the form, she advised she had started doing "farm work", a reference to a job packing vegetables for Sun Valley Foods where she remained for the next year. Mandeep Nagra stated her parents came to Canada in September, 2001 and lived with her and her husband. She stated that while working as a janitor her routine was to sleep for three or four hours after finishing her shift at the cleaning job and then work 8 or 9 hours in the orchard. She stated she was only 27 years old at that time and able to adjust to that onerous working schedule.

[12] Brad Novikoff testified he is an Investigation Control Officer employed by Human Resources Development Canada (HRDC). Kulwant Nagra and Mandeep Nagra applied for EI benefits and the information provided in their respective applications disclosed the payor – Nagra – was the uncle of Kulwant Nagra and Mandeep Nagra was the wife of Kulwant Nagra. As a consequence, their files were referred to Novikoff to carry out an investigation insofar as it concerned a certain aspect of the working relationship between the payor and the workers because they were related and – therefore – not dealing with each other at arm's length. As a result of engaging in correspondence with Nagra, Novikoff obtained cancelled cheques and a payroll record – Exhibit R-1 – indicating the hours worked by Kulwant Nagra and Mandeep Nagra and other workers during the relevant period. In addition, Novikoff stated he requested that Nagra provide daily records and/or some form of time sheet relating specifically to Kulwant Nagra and Mandeep Nagra but none were forthcoming. Novikoff stated ACT had visited the Nagra orchard at 2:45 p.m. on April 2, 2001. The appropriate form - Exhibit R-5 – was completed by an employee of the provincial Labour Standards Branch - serving as a member of ACT - with respect to the attendance of the inspection team at Nagra's Scotty Creek orchard. The only workers on site were Mandeep Nagra and Surinder Khunkhun. Interviews were conducted by a member of ACT who was fluent in Punjabi and English. During the course of his investigation, Novikoff received receipts for cash received by Kulwant Nagra and Mandeep Nagra and receipts for certain household bills allegedly paid in cash. Novikoff wrote a letter – Exhibit R-6 – to Rosemary Hunt, a Canada Pension Plan/Employment Insurance Rulings Officer wherein he reported that he was unable to link any cash – purportedly from payments received by Kulwant Nagra and Mandeep Nagra from the payor - to any subsequent deposits into their personal bank account. In the letter, Novikoff referred to two cash payments, each in the sum of \$1,019.40 received by Kulwant Nagra and Mandeep Nagra from the payor – as evidenced by signed receipts within Exhibit A-1 – for which there was no corresponding deposit of said cash to a bank account nor proof of payment for any



other household or related purposes despite their claim that they paid all bills in cash. The only documents provided to support this assertion were two Visa statements indicating two cash payments – in the sum of \$200 and \$80, respectively – had been made on October 10, 2001. On April 13, 2001, receipts indicated Mandeep Nagra had received the sum of \$1,000 cash from Nagra while her husband had been paid cash in the sum of \$800. Novikoff did not locate any matching deposits for these amounts nor was he provided with any evidence of expenditures paid for with these funds. A deposit in the sum of \$300 was noted by Novikoff following cash payments by the payor to Mandeep Nagra and Kulwant Nagra in the sums of \$375.69 and \$575.69, respectively. As noted in his letter to the Rulings Officer, Novikoff could not link any other deposits subsequent to receipt of cash - by these workers – from Nagra.

[13] Both appellants and the intervenor declined to cross-examine the witness.

[14] Janet Mah testified she is employed as an Appeals Officer at CCRA. When the rulings issued by the Rulings Officer were appealed, Mah was assigned the files and issued the decisions – on behalf of the Minister – which is the subject of the within appeals. Mah examined a Record of Employment (ROE) – Exhibit R-7 – pertaining to Mandeep Nagra's employment with Nagra as well as other ROEs applicable to her other employment as a janitor with Amco, a packer at Sun Valley Foods, and a labourer for Louie Russo Sawmills from March 17, 2000 to January 3, 2001. Mah also examined two ROEs – Exhibit R-8 – relating to Kulwant Nagra's employment with Nagra and Louie Russo Sawmills. Mah stated she discovered the earnings reported by Kulwant Nagra and Mandeep Nagra did not match the actual payments by Nagra. Mah stated she obtained - from Louie Russo Sawmills - a copy of the time sheet – Exhibit R-9 – setting out hours worked by Kulwant Nagra. She stated she had not verified the accuracy of this record with Kulwant Nagra but used the document for purposes of comparison with his time sheet – Exhibit R-10 – provided earlier by Nagra to the Rulings Officer. Mah prepared a working paper - Exhibit R-11 – in which she noted certain days where Kulwant Nagra had apparently worked for both Louie Russo Sawmills and Nagra. Since Kulwant Nagra had informed CCRA he had never worked at night, Mah stated she found it strange that he had apparently worked 17 hours during some days in February. Mah stated that until it was presented into evidence during the testimony of Nagra, she had never seen the time sheet entered as Exhibit A-5. In the course of her analysis, Mah examined the payroll record – Exhibit R-1 – in order to compare the amount of earnings shown thereon with the amount declared on Kulwant Nagra's ROE. Her analysis of payments received by Kulwant Nagra - Exhibit R-12 - according to Mah's calculations, indicated he had apparently received the sum of \$5,178.66 in cash and \$2,131.21 in cheques for a total of \$7,309.87. Mah stated she undertook an examination of the time sheets for Mandeep

Nagra received from Nagra and from Sun Valley Foods, filed as Exhibits R-13 and R-14, respectively. A list of hours worked by Mandeep Nagra at Sun Valley Foods was located in the file of the Rulings Officer and Mah noted the dates thereon referred to the year 2000. Mah stated she telephoned the Sun Valley Foods office and spoke with a person in the accounting office in order to receive confirmation that the dates provided were in fact in relation to Mandeep Nagra's work at Sun Valley Foods during 2001 and that the reference therein to the year 2000 was in error. Mah also reviewed the worker's time sheet – Exhibit R-15 - from Amco and prepared a sheet – Exhibit R-16 – setting out the hours worked by Mandeep Nagra at Amco, Nagra's orchard and Sun Valley Foods. Mah prepared an analysis – Exhibit R-17 – of the earnings of Mandeep Nagra in which payments received from Nagra were compared to the amount recorded on her ROE. According to Mah, this worker received a total of \$7,486.99 in cash and cheques from Nagra but her net pay should have been in the sum of \$8,841.93, a discrepancy of \$1,354.94. Mah stated she examined bank statements on the personal bank account used by Mandeep Nagra and her husband and could not locate any deposits in cash.

[15] Neither appellant nor the intervenor chose to cross-examine.

[16] In response to questions from the Bench, Mah agreed she had assumed Mandeep Nagra had continued to work 4 hours per night - for Amco - from January to July 31, 2001 whereas the evidence of the worker was that in May and June, 2001 she had worked only for Sun Valley Foods because she had been laid off by Amco on April 30, 2001, as indicated in the letter – Exhibit R-15 – prepared by an official of that corporation stating that Mandeep Nagra had worked for Amco between August 1, 2000 and April 30, 2001 and from July 1 to July 31, 2001, at a monthly salary of \$1,000. The ROEs – included in Exhibit R-7 – issued by Amco confirm these dates and amounts. Mah stated she had considered it to be somewhat odd that the worker would have worked 4 hours each night for Amco followed by 9-hour days at the Nagra orchard. Mah agreed that in September and October, 2001, Mandeep Nagra had worked only for Nagra. Mah did not follow up on obtaining a replacement time record from Sun Valley Foods because – after her telephone call to the office – she was confident the records pertained to the year 2001- and not 2000 - as stated therein.

[17] Surjit Nagra testified in rebuttal that he had no explanation for the discrepancy in earnings of the workers and that he had attempted to match receipts to the payroll record.

[18] Counsel for the respondent stated the Minister had conceded that Kulwant Nagra and Mandeep Nagra were engaged in pensionable employment with

Nagra pursuant to the provisions of the *Canada Pension Plan* (the "*Plan*") because they were providing services under a contract of service. However, the Minister had not been satisfied that these related parties met the test pursuant to paragraph 5(3)(b) of the *Act* and – therefore – decided their employment with the payor constituted excluded employment. Counsel submitted the parties were not only related to each other but were members of an extended family living in the same house in which they shared meals, household duties and child care. Some payments of wages were delayed and, taken as a whole, their working relationship was not substantially similar to one that would have been entered into between parties who were not related and were dealing with each other at arm's length.

[19] Surjit Nagra submitted the work had been done as related in his testimony and that of the workers, Kulwant Nagra and Mandeep Nagra and that they had been paid in full for their efforts.

[20] The relevant provision of the *Act* is paragraph 5(3)(b) which reads as follows:

(3) For the purposes of paragraph (2)(i),

...

(b) if the employer is, within the meaning of that Act, related to the employee, they are deemed to deal with each other at arm's length if the Minister of National Revenue is satisfied that, having regard to all the circumstances of the employment, including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is reasonable to conclude that they would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length.

[21] The essence of the assumptions of fact relied on by the Minister as set forth within paragraph 4 of the Reply to the Notice of Appeal (Reply) filed in Nagra's appeal – 2002-3512(EI) - are as follows:

- e) The Appellant purports that Kulwant worked for him at his orchard during the period of January 4, 2001 to October 29, 2001;
- f) The Appellant engaged Kulwant in a contract of employment respecting the orchard at some point during the period;

- g) Kulwant worked at Louie Russo Sawmills an average of 8 hours per day from 7:00 a.m. to 3:15 p.m. on Monday through Friday during the Period of February 20, 2001 to August 30, 2001;
- h) Kulwant's time sheets prepared by the Appellant respecting the Period purportedly show Kulwant working in the orchard an average of 9 hours per day from 7:00 a.m. to 4:30 p.m. on most if not all days of the week;
- i) On April 2, 2001, during an interview of the Appellant conducted by Human Resources Development Canada (HRDC) farm team investigators at the orchard, Kulwant was not on site;
- j) Kulwant's time sheet prepared by the Appellant for April 2, 2001 shows Kulwant purportedly working 9 hours at the orchard, including during the time that the HRDC farm team investigators were on site;
- k) The Appellant's payroll sheets purportedly show Kulwant's earnings at \$10.00 per hour, while in his application for employment insurance benefits Kulwant showed his earnings as \$9.00 per hour;
- l) The Appellant did not pay Kulwant in cash;
- m) Kulwant did not work the number of hours shown on his record of employment issued by the Appellant;
- n) The Appellant and Kulwant entered into an arrangement to qualify for employment insurance benefits to which he would otherwise not be entitled;

[22] With respect to Nagra's appeal – 2002-3513(EI) - and the intervention therein by Mandeep Nagra, the Reply sets forth certain assumptions relied on by the Minister as follows:

- f) The Appellant engaged Mandeep in a contract of employment respecting the orchard at some point during the Period;
- g) Mandeep worked at Amco Commercial Cleaning from midnight to 4:00 a.m. on average 5 to 6 days a week from January 1 to April 30, 2001;
- h) Mandeep's time sheets prepared by the Appellant respecting the Period purportedly show her working in the orchard from 7:00 a.m.

to 4:30 p.m. most if not all days of the week from January 1 to April 9, 2001;

- i) On April 2, 2001, during an interview conducted by Human Resources Development Canada (HRDC) farm team investigators, Mandeep claimed that April 2 was her first day of work with the Appellant in 2001;
- j) Mandeep's time sheets prepared by the Appellant show her first day of work as January 4, 2001;
- k) The Appellant did not pay Mandeep in cash;
- l) The Appellant's payroll sheets purportedly show Mandeep's earnings at \$10.00 per hour while her application for employment insurance benefits purportedly show her hourly rate was \$9.00 per hour;
- m) The Appellant and Mandeep entered into an arrangement to qualify Mandeep for employment insurance benefits to which she would otherwise not be entitled to;

[23] In *Légaré v. Canada (Minister of National Revenue – M.N.R.)*, [1999] F.C.J. No. 878 – a decision of the Federal Court of Appeal – Marceau, J.A. speaking for the Court stated at page 2 of the judgment:

In this matter, the Court has before it two applications for judicial review against two judgments by a judge of the Tax Court of Canada in related cases heard on the basis of common evidence which raise yet again the problems of interpretation and application of the saving provision, subparagraph 3(2)(c)(ii). I say yet again because since its passage in 1990, several decisions of the Tax Court of Canada and several judgments of this Court have already considered what workable meaning could be given to subparagraph 3(2)(c)(ii). In reading the text, the problems it poses beyond its deficient wording are immediately obvious, problems which essentially involve the nature of the role conferred on the Minister, the scope of the Minister's determination and, by extension, the extent of the Tax Court of Canada's general power of review in the context of an appeal under sections 70 et seq. of the Act.

While the applicable principles for resolving these problems have frequently been discussed, judging by the number of disputes raised and opinions expressed, the statement of these principles has apparently not always been completely understood. For the purposes of the applications before us, we wish to restate the guidelines which

can be drawn from this long line of authority, in terms which may perhaps make our findings more meaningful.

The Act requires the Minister to make a determination based on his own conviction drawn from a review of the file. The wording used introduces a form of subjective element, and while this has been called a discretionary power of the Minister, this characterization should not obscure the fact that the exercise of this power must clearly be completely and exclusively based on an objective appreciation of known or inferred facts. And the Minister's determination is subject to review. In fact, the Act confers the power of review on the Tax Court of Canada on the basis of what is discovered in an inquiry carried out in the presence of all interested parties. The Court is not mandated to make the same kind of determination as the Minister and thus cannot purely and simply substitute its assessment for that of the Minister: that falls under the Minister's so-called discretionary power. However, the Court must verify whether the facts inferred or relied on by the Minister are real and were correctly assessed having regard to the context in which they occurred, and after doing so, it must decide whether the conclusion with which the Minister was "satisfied" still seems reasonable.

[24] In the case of *Elia v. Canada (Minister of National Revenue - M.N.R.)*, [1998] F.C.J. No. 316, a decision of the Federal Court of Appeal dated March 3, 1998, at page 2 of the certified translation Pratte, J.A. stated:

... Contrary to what the judge thought, it is not necessary, in order for the judge to be able to exercise that power, for it to be established that the Minister's decision was unreasonable or made in bad faith having regard to the evidence before the Minister. What is necessary is that the evidence presented to the judge establish that the Minister acted in bad faith, or capriciously or unlawfully, or based his decision on irrelevant facts or did not have regard to relevant facts. The judge may then substitute his decision for that of the Minister.

[25] First, I will deal with the evidence as it pertains to Kulwant Nagra's working relationship with the payor.

[26] As disclosed in subparagraphs 4(g) and 4(h) of the Reply to Nagra's appeal concerning Kulwant Nagra's employment with him, the effect is to suggest that Kulwant Nagra was doubling up his hours – at some point – between his work at Louie Russo Sawmills and the Nagra orchard. In addition, the Minister relied on the fact the worker was not present at the site of the ACT visit on April 2, 2001. The fact

the payroll sheet indicated the worker's hourly wage was \$10 - rather than \$9 - as reported on his application for unemployment benefits was taken into account by the Minister and assigned a negative connotation. The Minister took the position the worker had received no amount in cash from the payor and concluded Nagra and Kulwant Nagra entered into an arrangement to qualify for employment insurance benefits to which the worker would otherwise not be entitled.

[27] The Minister did not consider that Kulwant Nagra had also worked for the payor in 1997, 1998, 1999 and 2000. An examination of the time sheet - Exhibit R-9 - pertaining to Kulwant Nagra's employment with Louie Russo Sawmills and the time sheet - Exhibit A-5 - relating to his work at Nagra's orchard discloses the Kulwant Nagra worked at the orchard - between 7 and 9 hours, most days - between January 4 and February 20, 2001. However, during this period, there were 11 days when no work was performed. Kulwant Nagra began work at the sawmill on February 20, 2001 and from that day to February 24, did not work at the orchard. On February 24, 2001 - Saturday - he did not work at either place but worked 9 hours at the orchard on Sunday and then returned to the sawmill on Monday and worked an 8-hour day. From March 19 to March 27, inclusive, Kulwant Nagra worked at the sawmill, except for the 24th - Saturday - when he worked 9 hours at the orchard and then returned to his job at the sawmill for the next 3 days prior to working for the payor at the orchard on March 28 until the end of the month. He did not work at the sawmill on any of those days. On May 10, 2001, the worker put in 2 hours at the sawmill and 10 at the orchard. I cannot find any untoward entries that would lead one to draw the conclusion that the worker was padding his hours at the orchard. It is obvious the pruning and raking work had to be done in the early part of the year in order to prepare for the forthcoming season. Nagra left the orchard on January 25, 2001 and did not return until March 25, 2001. For nearly all of that period, he was in India. During Nagra's absence, Kulwant Nagra - with the assistance of his wife, Mandeep - exercised a supervisory function in relation to the home orchard as well as other orchards operated by Nagra. They collected \$600 rent from a tenant for the months of February and March and applied those funds together with two months rent - totalling \$1,000 - otherwise payable by them to Nagra in his capacity as their landlord. Upon Nagra's return, the parties took into account the amounts collected and the amount attributable to rent as well as the sum of \$991.97 received in cash on January 23, 2001 by Kulwant Nagra, as acknowledged by a signed receipt within Exhibit A-1. A cheque dated January 31, 2001 - in the sum of \$500 payable to Mandeep Nagra - was negotiated by her on February 5, 2001 at the Toronto-Dominion Bank in Kelowna. A sheet - marked with a blue tab - within the spreadsheet - Exhibit R-1 - indicates Kulwant Nagra performed 138 hours piecework at a rate calculated at \$15.50 per hour. However,

according to his testimony, the majority of the ordinary work subsequent to Nagra's return from India was performed at the usual rate of \$9 per hour, although he was aware the piecework payment was higher. The inspection team – ACT – attended at the Scotty Creek orchard site - not the home orchard - and the details of that visit as entered on the relevant form, constitutes classic hearsay as the information therein was recorded by a member of the inspection team who was employed by the provincial government and not by CCRA. At subparagraph 4(e) of the Reply, the Minister assumed:

The Appellant purports that Kulwant worked for him at his orchard during the period of January 4, 2001 to October 29, 2001.

[28] In the following subparagraph, the Minister relied on this assumption of fact:

The Appellant engaged Kulwant in a contract of employment respecting the orchard at some point during the period;

[29] As noted earlier, for purposes of the *Plan*, the Minister accepted that Kulwant Nagra was engaged in pensionable employment with Nagra.

[30] Nagra testified it is difficult to find and retain farm workers as the tasks are difficult and the heat is often oppressive during the summer. He stated it was rare for any worker to return for another season. During picking season, some individuals worked only a few hours or a few days prior to collecting their pay and moving on. Nagra relied on advertising and word of mouth to recruit workers when needed. In the course of a season, there are periods when fewer workers are required and during other times more experienced people are needed to drive tractor and/or to handle irrigation equipment. In the within appeals, proof of payments for wages – other than those evidenced by cancelled cheques – is based on the willingness of the Court to accept the testimony of the workers and the payor that wages earned were paid in full and that – to the best of their knowledge – said earnings were properly recorded.

[31] Having regard to the evidence as it pertains to Kulwant Nagra's employment with Nagra, I find the Minister ignored important facts including the failure to take into account that the worker had worked for Nagra for three or more years prior to 2001. I also conclude the Minister inferred the worker – on occasion - purported to have worked a full day at two places at the same time, namely, the sawmill and the orchard. The time sheet – Exhibit R-9 – does not support this conclusion. The hourly rate recorded on the application for benefits is not particularly significant when one



takes into account it is the total amount of insurable earnings that is important and the rate of \$9 per hour was more accurate than not, considering the number of days worked to which it applied. I find there is no credible or reasonable evidence upon which the Minister could have drawn the conclusion - erroneously stated as an assumption of fact - that the worker and the payor had cooked up a scheme to falsify the number of hours worked so as to fatten his entitlement for unemployment benefits. Also, I cannot find any reason to support the Minister's conclusion that Kulwant Nagra would not otherwise be qualified to receive said benefits when his ROE - Exhibit R-8 - from Louie Russo Sawmills indicated he had worked 1,508.55 insurable hours and had insurable earnings in the sum of \$9,378.72. The Minister's bald assertion that Nagra did not pay the worker in cash is not supported by the evidence, although the circumstances must be viewed by taking into account the dynamics of the familial relationship between uncle and nephew living in the same household. Janet Mah - Appeals Officer - testified she had concluded there were some days where the worker had purported to work at both the orchard and the sawmill. She referred to a time sheet - Exhibit R-10 - taken from the file of the Rulings Officer upon which hours of work at Louie Russo Sawmills were marked - by someone - in red ink. There were 4 days marked, February 11 to 14, inclusive, in which it appeared as though Kulwant Nagra had worked 11.5 hours the first day and 8 hours for each of the following days at the sawmill while also recording 9 hours per day at the orchard. However, Kulwant Nagra did not begin working at the sawmill until February 20, 2001 and that is accepted by the Minister at subparagraph 4(g) of the Reply. If these time sheets - Exhibit R-10 - are correct rather than the one filed as Exhibit A-5 - then it appears as though there would be an overlap on some days but the origin of the subsequent notations thereon is not clear and there is confusion as to what documentation was produced by whom - to whom - and when.

[32] I conclude I must intervene in the Minister's decision because it is not reasonable having regard to my analysis of the evidence. Before undertaking the requisite examination of the indicia set forth in the relevant paragraph of the *Act*, I will consider the circumstances pertaining to Mandeep Nagra and decide whether to intervene in that decision.

[33] Janet Mah was the Appeals Officer examining the appeal of Mandeep Nagra from the ruling made by the Rulings Officer. It became apparent in the course of Mah's testimony that she relied to a large extent on the purported statement of hours worked - Exhibit R-14 - by Mandeep Nagra at Sun Valley Foods. In the Reply filed with respect to Nagra's appeal - 2002-3513(EI) - concerning this worker, the Minister correctly assumed the worker had worked at Amco from midnight to 4:00 a.m., 5 or 6 days per week from January 1 to April 30, 2001. However, the time sheet found in

the Rulings Officer's file - and relied on by Mah - pertained to the worker during 2000 and indicated she had worked between 5 and 8 hours per day between April 11, 2000 and June 4, 2000 at Sun Valley Foods. Mah stated she telephoned the Sun Valley Foods office and had spoken with someone who had assured her the time sheet was incorrectly dated and that said hours were correct insofar as they represented Mandeep Nagra's working hours during 2001. Mah assumed the worker was also still employed by Amco as well as working in the orchard for the entire period from January 4 to July 31, 2001. However, the worker did not work for Amco during the months of May and June and worked there – again - only for the month of July when she left that employment due to problems related to securing child care. During the months of May and June, 2001, Mandeep Nagra worked only for Sun Valley Foods and not for Amco or Nagra at the orchard. During the months of September and October, 2001, she worked exclusively for Nagra. Mah could not reconcile the reported earnings on the ROE and/or the payroll record with the total amount of the cheques and cash according to the receipts in Exhibits A-1 and A-2, respectively. The so-called interview conducted by a member of ACT during which a notation was recorded that the worker had stated it was her first day of work for Nagra is not worthy of any weight. Mandeep Nagra stated that – on April 2, 2001 - she had informed the interviewer it was her first day working at the Scotty Creek orchard, a property apparently leased by Nagra. The Minister accepted the worker was engaged in pensionable employment with Nagra during the period but decided her employment was not insurable because – *inter alia* - she had been paid – allegedly - in cash and there was a discrepancy between the \$10 per hour earned in the months of January through March, 2001 and the rate of \$9 per hour used subsequently for purposes of completing the ROE and the application for unemployment benefits. The Minister concluded Nagra and the worker – in the same fashion as her husband, Kulwant – had entered into an arrangement whereby certain hours of work would be fabricated in order to entitle her to EI benefits to which she would not otherwise be entitled. The payroll record – Exhibit R-1 – indicates Mandeep Nagra earned \$15.50 per hour on a piecework basis during 138 hours. Her evidence was that she earned \$10 per hour until Nagra's return from holidays and then \$9 per hour for ordinary work and a higher rate for picking on a piecework basis which she thought had been calculated at \$10 per hour. According to the ROEs comprising Exhibit R-7, she had a total of 1,250 insurable hours of employment with Amco and total insurable earnings in the sum of \$8,000. She also had insurable earnings in the sum of \$2,351.45 – representing 205 insurable hours – from her employment with Sun Valley Foods.

[34] In my view of the evidence, the Minister's decision was unduly influenced by Mah's reliance on the incorrect assumption that Mandeep Nagra was working 4 hours

per night at Amco for the entire period from January 4 to July 31, 2001, while also working for Nagra and that during the months of May and June, she was working for Amco as well as Sun Valley Foods. However, the worker did not work for Nagra between April 9 and July 1, 2001. It does not appear as though the Minister properly took into account that the worker had provided services to the payor during previous years and did not properly consider circumstances applicable to the orchard industry. There was disbelief on the part of Mah that someone could – or would – work as many hours per day as Mandeep Nagra and she concluded the hours allegedly spent working for Nagra were inflated. She also decided Mandeep Nagra had never been paid in cash for wages and did not accept that certain amounts – arising from their own rent and rent collected from Nagra's tenant - had been taken into account by the parties in their calculations of wages earned as though paid in the form of cash and applied to outstanding wages. The Minister considered that aspect of their working relationship to have been a scam. The analysis – Exhibit R-16 – prepared by Mah is confusing and could have been based on updated information with correct dates - confirmed in writing – rather than relying on information found in the file of the Rulings Officer and failing to obtain additional information under circumstances where there appeared to be a conflict in the record of hours worked in relation to certain days during the relevant period.

[35] For the reasons stated, I conclude the decision of the Minister – concerning the employment of Mandeep Nagra with Nagra – is unreasonable and I must intervene.

[36] As a consequence of deciding to intervene in both decisions, I turn now to an analysis of the evidence for the purpose of determining the issue in accordance with the wording of paragraph 5(3)(b) of the *Act*.

Remuneration paid:

[37] The hourly rate paid to both workers appears to be reasonable and in line with the wage paid to all other non-related workers who had previous orchard experience. The piecework rate was the same as that paid to other workers. During the months of January, February and March, 2001, Kulwant Nagra and Mandeep Nagra were paid the sum of \$10 per hour. Later, they received \$9 per hour or were remunerated on a piecework basis during picking season. A review of the payroll record – Exhibit R-1- discloses that some workers earned \$8 per hour and another non-related worker – Khunkhun – earned \$10 per hour in July and August. The manner of payment is disorganized and it would have been more appropriate for the payor to have paid all wages to his related workers by using cheques. While he was absent from Canada, it is not unreasonable for Kulwant Nagra and Mandeep Nagra to have recorded their

hours of work and to have used rent money collected from the tenant living on the same property and also to have applied – in a notional sense - the amount owed by them - to Nagra - for rent in order to reduce the amounts owed to them for earned wages. It is somewhat unusual to have a working relationship where cash - in odd amounts, according to the receipts in Exhibit A-1 - is paid to workers. One would not ordinarily expect a boss to sit around the kitchen table and to dole out – precisely – the sum of \$670.42 or \$1,121.18 in payment of wages to non-related workers. The piecework hourly rate - \$15.50 - was probably calculated by Nagra's accountant at a later date and the higher rate would have the effect of reducing the total of insurable hours for that specific period - attributable to fruit picking - compared to the result one would obtain by using the \$10 per hour rate.

Terms and conditions:

[38] The work performed by both Kulwant Nagra and Mandeep Nagra was consistent with that required within the orchard industry. The hours are sometimes longer – weather permitting – and there is a slack season with respect to certain tasks. There does not appear to be any significant departure from the norm as both workers were experienced and had been employed previously by Nagra. There was an understanding they could seek work elsewhere in order to earn more money but could not expect to be re-hired at the orchard unless there was work to be done and Nagra was in need of experienced workers.

Duration:

[39] The pruning and raking work had to be done in January, February and March. After April 9, 2001, Mandeep Nagra's services were not required as she was not experienced in operating tractors or in setting up and moving heavy irrigation equipment. She did not work again until after July 1 and – later - her services were needed during August. She began picking fruit in September and continued until the end of the harvest in mid-October and then worked doing cleanup until the end of the month. She and Kulwant Nagra were the last workers laid off because they were both experienced in carrying out end-of-the-season procedures and the other workers had been mostly engaged in picking fruit. Kulwant Nagra worked only 66 hours for Nagra during the month of May and did not provide any services to the payor during June. He returned to work at the orchard in July and August when he had some time off from Louie Russo Sawmills. His last day of work at the sawmill was on September 3, 2001, and he worked more or less full time for Nagra until the end of October. There were some days in July when he worked at the sawmill for only 2 hours and then worked at the orchard for 8 or 9 hours. Overall, I find the

circumstances surrounding the provision of services by Kulwant Nagra and Mandeep Nagra - viewed in the context of a complete season - were reasonable having regard to the nature of the industry. There does not appear to be any basis upon which to conclude that there was any make-work. Moreover, Nagra testified he would not have discharged any existing worker merely to make room for either his nephew or his wife to return to work at the orchard even though they were experienced workers.

Nature and importance of the work performed:

[40] Orchard work is hard work. There are many different tasks required to be performed throughout an entire season. Both workers were experienced and Kulwant Nagra could handle certain tasks that his wife could not. As a result, he worked for Nagra during certain periods while she worked for other employers. The work had to be done and the picking season is especially busy depending on the ripening times of several varieties of fruit. While Nagra was away on an extended holiday, he left Kulwant Nagra and Mandeep Nagra in charge of his orchards and rental interests. They were permitted to record their own hours of work and were paid at a slightly higher rate – \$1 per hour – during this period. On his return, it would have been apparent to Nagra whether the requisite work had been completed properly.

[41] Of course, hundreds of hours of work on the part of CCRA employees and the effort and expense occasioned by the entire appeal process would not have been necessary had Nagra taken the time and effort to document - in a clear and concise manner - every significant aspect of the working relationship between himself and his related workers, particularly the manner of payment. Bank charges are not so costly that cheques could not have been issued - one to the other - in payment of rent and for payment of wages. If cash advances were paid from time to time, that practice – *per se* – is not extraordinary, provided appropriate documentation exists in respect of these transactions. In the case of *Barbara Docherty v. M.N.R.* - [2000] T.C.J. No. 690 - dated October 6, 2000, I commented as follows:

The template to be utilized in making a comparison with arm's length working relationships does not require a perfect match. That is recognized within the language of the legislation because it refers to a "substantially similar contract of employment". Any time the parties are related to each other within the meaning of the relevant legislation, there will be idiosyncrasies arising from the working relationship, especially if the spouse is the sole employee or perhaps a member of a small staff. However, the object is not to disqualify these people from participating in the national employment insurance scheme provided certain conditions have been met. To do so without

valid reasons is inequitable and contrary to the intent of the legislation.

[42] *Regulation 9.1* issued pursuant to the *Act* – relevant to the within appeals - reads:

9.1 Where a person's earnings are paid on an hourly basis, the person is considered to have worked in insurable employment for the number of hours that the person actually worked and for which the person was remunerated.

[43] While I appreciate the Minister had suspicions and reservations concerning several aspects of this matter, the sworn testimony of Nagra and Kulwant Nagra and Mandeep Nagra together with certain documentary evidence – albeit, on occasion, conflicting – leads me to conclude the parties would have entered into a substantially similar contract of employment if they had not been related and had been dealing with each other at arm's length. In my view, it is not sufficient for an Appeals Officer to make a decision based - for the most part – on an examination of certain documents within the file of the Rulings Officer, especially when there are questions concerning the accuracy of certain time sheets and other pieces of information that seem to be in conflict. The time sheet obtained from Louie Russo Sawmills was not provided to Kulwant Nagra for his examination and verification. The two sets of time sheets – Exhibits A-4 and A-5 – and the others apparently obtained by the Rulings Officer – Exhibits R-10 and R-13 – indicate there are some differences in hours recorded but there is no evidence concerning the method or manner by which the calculations were done and by whom. Nagra testified that Exhibit A-4 was the accurate time sheet for Mandeep Nagra and Exhibit A-5 represented the record of hours worked by Kulwant Nagra. The visit by ACT to the Scotty Creek property did not elicit any evidence useful to deciding issues in the within appeals. If the purpose of such a visit is to ensure the identity of persons working at a location on a certain day, then questions should be asked in such a precise manner - and answers noted – with respect to the location of other properties operated by the payor so as to eliminate – or, at least minimize - any wiggle room later on when different explanations are proffered by workers concerning matters such as their absence during that day, work starting dates and other relevant bits of information relevant to a subsequent examination of the working relationship. Interviews of workers should be conducted - and a record thereof created – by an employee of CCRA so that testimony can be based on those observations and not on the notations of some provincial employee who is not called to the stand and is not part of the process for purposes of determining insurable and/or pensionable employment at a later date.

That particular member of ACT is discharging his or her own duty in the context of administering the policy of an agency mandated to ensure compliance with provincial labour standards.

[44] According to the calculations done by Janet Mah – Exhibit R-12 – Kulwant Nagra received only a total of \$7,309.87 in cash and cheques. His insurable earnings were in the sum of \$10,926.50 as stated in his ROE - Exhibit R-8 – representing 1,184 insurable hours and his net pay should have been in the sum of \$8,841.93. An examination of the bundle of receipts - Exhibit A-1 – for cash received by Kulwant Nagra and Mandeep Nagra includes a slip of paper with the notation that cheque M0236 in the sum of \$500 was missing. That cheque – payable to Kulwant Nagra - was later located by Nagra and now forms part of the cancelled cheques filed as Exhibit A-2. The cheque – in the sum of \$500 - is dated January 31, 2001. This sum was not included in Mah's calculations. In addition, an examination of the receipts - comprising Exhibit A-1 - disclosed a receipt dated June 17, 2001, wherein Kulwant Nagra acknowledged receipt of cash – from Nagra - in the sum of \$626.80. This amount was not included in the list of payments itemized by Mah in Exhibit R-12. According to Kulwant Nagra's ROE relating to his employment with Nagra, he earned the gross sum of \$10,926.50 between January 4, 2001 and October 31, 2001. This sum is consistent with the figure shown on the relevant Paystub Detail sheet – marked with a blue tab - near the end of Exhibit R-1. On said sheet, the sum of \$9,202.88 is the amount shown as representing the net pay for Kulwant Nagra after deductions. Mah stated her calculation of Kulwant Nagra's net pay – according to Exhibit R-1 – was in the sum of \$8,841.93 against which she could track only a total of \$7,309.87 in payments from Nagra, thereby creating a difference in the sum of \$1,532.06. However, once the missing cheque - in the sum of \$500 - is included together with the receipt of cash - in the sum of \$626.60 - the total payment received from Nagra increases to \$8,436.67, resulting in a discrepancy in the sum of \$405.26.

[45] With respect to the earnings of Mandeep Nagra, her relevant ROE – within Exhibit R-7 - indicated her insurable hours were 1,154 and her insurable earnings were in the sum of \$10,641. This figure also appears in the payroll record - Exhibit R-1 - as it pertains to her earnings for the year. Her net pay should have been in the sum of \$8,841.93 but the total amount - according to the signed receipts and cheques - received by her amounted to only \$7,486.99, creating a discrepancy in the sum of \$1,354.94.

[46] It is apparent the insurable hours and the insurable earnings stated in the relevant ROE of Kulwant Nagra and Mandeep Nagra cannot be fully substantiated on the basis of payments received whether in cash or by cheque. Therefore, an

adjustment must be made in each case to reflect the correct amount in accordance with the requirements of the aforementioned *Regulation*. In order to do so, the amount of the shortage in payments received must be deducted from the amount of gross – also insurable - earnings utilized for purposes of the relevant ROE. Since the hourly wage was \$10 for each worker during part of the relevant period and \$9 per hour for another part, I have chosen the sum of \$9.50 per hour as appropriate to represent the amount to be divided into the proven earnings in order to arrive at the proper calculation of insurable hours.

[47] I find the insurable earnings of Kulwant Nagra - in the course of his employment with Nagra - to have been in the sum of \$10,518.24 which sum represents the reported insurable earnings less the amount of unproven payment. By dividing the sum of the discrepancy - \$405.26 – by 9.50 – representing the hourly wage of \$9.50 – the resulting number – 42.65, rounded up to 43 – is then deducted from the amount of insurable hours – 1,184, as stated in his ROE – and produces the number – 1,141 - which now constitutes the correct number of insurable hours.

[48] I find the insurable earnings of Mandeep Nagra - in the course of her employment with Nagra - to have been in the sum of \$9,286.06 - and not \$10,641 - as stated in her ROE. The discrepancy between those two amounts - \$1,354.94 - when divided by 9.50 - produces the number – 142.62 – which I have rounded up to 143. When 143 is deducted from 1,154 – stated in her ROE - the result –1,011 - now represents the correct number of her insurable hours of employment.

[49] The appeal of Surjit Singh Nagra – 2002-3512(EI) - is allowed as is the appeal of Kulwant Singh Nagra – 2002-4251(EI) - and the decision of the Minister issued in each instance is hereby varied to find:

- Kulwant Singh Nagra was engaged in insurable employment with Surjit Singh Nagra between January 4, 2001 and October 29, 2001 during which period his insurable earnings were in the sum of \$10,518.24 representing 1,141 insurable hours.

[50] The appeal of Surjit Singh Nagra – 2002-3513(EI) - is allowed and the decision of the Minister is varied to find:

- Mandeep Kaur Nagra was engaged in insurable employment with Surjit Singh Nagra between January 4, 2001 and October 29, 2001 during which period her



insurable earnings were in the sum of \$9,286.06 representing 1,011 insurable hours.

Signed at Sidney, British Columbia, this 18th day of July 2003.

"D.W. Rowe"

---

Rowe, D.J.

CITATION: 2003TCC497

COURT FILE NO.: 2002-3512(EI), 2002-3513(EI) and  
2002-4251(EI)

STYLE OF CAUSE: Surjit Singh Nagra and M.N.R.  
Surjit Singh Nagra and M.N.R. and  
Mandeep Kaur Nagra  
Kulwant Singh Nagra and M.N.R.

PLACE OF HEARING: Kelowna, British Columbia

DATE OF HEARING: April 7, 2003

REASONS FOR JUDGMENT BY: The Honourable D.W. Rowe,  
Deputy Judge

DATE OF JUDGMENT: July 18, 2003

APPEARANCES:

For the Appellants: The Appellants themselves

Counsel for the Respondent: Raj Grewal

For the Intervenor: The Intervenor herself

COUNSEL OF RECORD:

For the Appellant:  
Name:  
Firm:

For the Intervenor:  
Name:  
Firm:

For the Respondent: Morris Rosenberg  
Deputy Attorney General of Canada  
Ottawa, Canada