

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of:

KANWALDEV S. SRA A/K/A KANWAL S. SRA  
and MANAT GRENWAL A/K/A MANJIT SINGH  
GREWAL and ARCHER CAR WASH INC. (T/A  
ARCHER CAR WASH) ALSO (T/A ARCHER CAR  
WASH & DETAILING CENTER),

Petitioners,

To Review Under Section 101 of the Labor Law:  
An Order to Comply With Article 19 of the Labor Law  
and an Order to Comply With Article 6 of the Labor  
Law and an Order Under Article 19 of the Labor Law,  
each dated March 9, 2009,

- against -

THE COMMISSIONER OF LABOR,

Respondent.

DOCKET NO. PR 09-107

RESOLUTION OF DECISION

**APPEARANCES**

Anthony Auciello, Esq. for Petitioner Kanwaldev S. Sra A/K/A Kanwal S. Sra.

Manjit Grenwal, *pro se* Petitioner and on behalf of Archer Car Wash, Inc.

Maria L. Colavito, Counsel, NYS Department of Labor, Benjamin T. Garry of Counsel, for Respondent.

**WHEREAS:**

The above proceeding was commenced by the filing of a petition for review pursuant to Labor Law § 101 and Part 66 of the Industrial Board of Appeals' Rules of Procedure and Practice (Rules) (12 NYCRR Part 66) on May 8, 2009. The petition was filed by Manjit Grewal (Grewal). The caption on the petition listed only "Archer Car Wash, Inc" as petitioner although the orders were issued against Archer Car Wash, Inc., Grewal, and Kanwal Sra (Sra). Respondent Commissioner of Labor filed an answer to the petition on August 17, 2009.

A pre-hearing telephone conference was set for March 29, 2010. Notice of the pre-hearing conference was sent to Grewal at the address listed in the petition and a request was made that Grewal inform the Board of a telephone number that could be used for the conference. No telephone number was supplied and petitioner, therefore, did not make an appearance at the pre-hearing conference. A letter was sent on March 29, 2010 to Grewal, at the address listed on the petition and at the address listed with the Department of State and also copied to Kanwal Sra (Sra). The letter informed the parties of the hearing date of July 21, 2010. The March 29 letter to the address listed on the petition for Grewal was returned to the Board by the post office as "vacant, unable to forward." The other two letters were not returned.

Upon notice by the Board to the parties, a hearing in the matter of the petition was set for July 21, 2010. The notice to the parties indicated that the hearing was in the matter of Archer Car Wash, Inc. only. The individuals were not named although they were served. Petitioner failed to attend or otherwise appear at the hearing.

Pursuant to Labor Law § 103 and Rule 65.30, the burden of proof is on the Petitioner to prove that the orders under review are not valid or reasonable and Rule 65.24 states that "the failure of a party to appear shall be deemed a waiver of all rights except the rights to be served with a copy of the decision of the Board and to request Board review" pursuant to Rule 65.41, unless application for reinstatement is made within five days after the scheduled hearing. Petitioner has not made any application for reinstatement. In the ordinary course of Board procedure, the Petition would be dismissed at that point.

After hearing it was noted that the petition contained allegations relating to the liability of Sra and Grewal even though they were not named in the caption. The Board sent a letter to DOL, Sra and Grewal informing them of a case management conference to be held by telephone on August 16, 2010 and clarified that the orders were not only against Archer Car Wash, Inc. but also against Grewal and Sra. The letter to Sra was returned as undeliverable. Thereafter, a phone call was made to Sra leaving a message that the orders were not only against Archer Car Wash but also against Sra and Grewal.

On August 25, 2010, the Board received notice that Sra was being represented by an attorney. Another hearing date was set up and noticed for January 25, 2011 and then adjourned to February 17. On February 11, 2011 DOL notified the Board that it was seeking approval to withdraw the order and issue a new order which omits Sra as an employer. The Board hereby approves the withdrawal and modifies the orders as follows.

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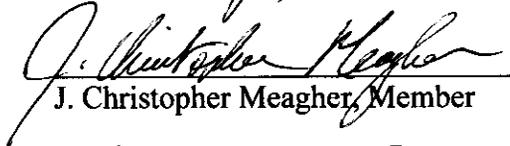
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**NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:**

1. The Orders are amended to remove the name of Kanwaldev S. Sra A/K/A Kanwal Sra from the Orders; and
2. The Petition is otherwise dismissed pursuant to the Rules.



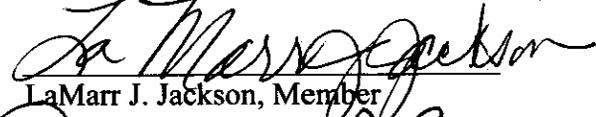
Anne P. Stevason, Chairman



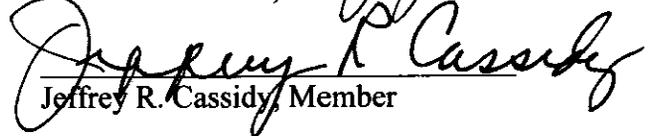
J. Christopher Meagher, Member



Jean Grunet, Member



LaMarr J. Jackson, Member



Jeffrey R. Cassidy, Member

Dated and signed in the Office  
of the Industrial Board of Appeals  
at New York, New York, on  
April 27, 2011.