

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
GENERAL DIVISION

Dublin Express Transport Solutions, Ltd.,		Case No. 13CV-13521
		Judge Jeffrey M. Brown
Appellant,		
vs.		
Ohio Department of Job and Family Services,		
Appellee.		

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**Decision and Judgment Entry Affirming Decision of Ohio  
Unemployment Compensation Review Commission**

**and**

**Notice of Final Appealable Order**

**Brown, J.**

This case is a Revised Code 4141.26(D)(2) administrative appeal, by Dublin Express Transport Solutions Ltd. (Appellant) doing business as “Wheels To Go,” from a Decision of the Ohio Unemployment Compensation Review Commission finding that Appellant is a liable employer under Ohio unemployment compensation law. The record that the Commission has certified to the Court reflects the following facts and procedural history.

**Facts and Procedural History**

Appellant is an Ohio limited liability company, owned by Yasir Ahmed, which is in the business of providing taxi services for disabled individuals who need transportation to and from medical appointments. *Transcript of Testimony, Nov. 15, 2013 (T.) 16-17.* Appellant has operated its business in the Columbus, Ohio area since 2006, and its customers include Franklin

County, the Ohio Department of Job and Family Services, and other government agencies. *T. 16-17, 22, 29.* Appellant negotiates with each agency to determine the rates Appellant will charge the agency for providing taxi services to the agency's clients. *T. 20, 29.* Appellant's business is located at 4900 Reed Road in Columbus, Ohio. *T. 17.*

The United States Department of Labor mandates that a percentage of all active Ohio contributory employers be audited every year to verify their compliance with Ohio unemployment compensation law. In March 2012, therefore, when Appellant was randomly chosen for an audit, the Ohio Department of Job and Family Services (ODJFS) began an audit of Appellant's business. The audit was initially limited to the year 2011 but was expanded to include the years 2008 to 2010 due to preliminary findings by ODJFS.

On August 2, 2012, ODJFS mailed a final audit report to Appellant. As set forth in the final audit report, ODJFS determined that Appellant had failed to properly classify thirty-two taxi drivers as employees in accordance with R.C. 4141.01(B)(1) and Ohio Adm. Code 4141-9-04(A). In the final audit report ODJFS stated, "The examination of the employer's records revealed that individuals whom the employer considered to be subcontractors and spot labor were found to be in covered employment and payments to them were found to be remuneration." In the final audit report ODJFS concluded, "Based upon the audit results, the employer should correctly report all covered workers to ODJFS."

On August 3, 2012, ODJFS mailed an "Ohio Unemployment Tax Notification Determination of Employer's Liability and Contribution Rate Determination" (Determination) to Appellant. Consistent with the final audit report, ODJFS notified Appellant, in the Determination, that ODJFS considered Appellant to be an "employer" under Ohio unemployment compensation law. Pursuant to R.C. 4141.26, ODJFS assigned unemployment

compensation fund contribution rates to Appellant for the years 2007 through 2012. The Determination also included the following statement:

This determination applies to services performed by the individual(s) which were previously not being reported on your Unemployment Compensation Quarterly Tax Return. The individual(s), who were found to be in covered employment by a Compliance Field Auditor during a recent investigation, must be considered in covered employment and reported as such as their services do not fall within the categories of excluded employment under the Ohio Unemployment Compensation Law.

On September 1, 2012, Appellant requested reconsideration of the Determination, asserting that Appellant was not the employer of the taxi drivers and that ODJFS had improperly classified them as employees when they were actually independent contractors. On September 12, 2012, the Director of ODJFS issued a Director's Reconsidered Decision affirming the initial Determination.

On October 5, 2012, Appellant appealed the Director's Reconsidered Decision to the Ohio Unemployment Compensation Review Commission.

On November 15, 2013, a Commission Hearing Officer conducted a hearing on Appellant's appeal. Appellant attended the hearing through counsel and presented the testimony of Mr. Ahmed. ODJFS attended the hearing through counsel. Multiple exhibits were admitted into evidence.

On November 21, 2013, the Commission issued a Decision affirming the Director's Reconsidered Decision. The Commission found that Appellant's thirty-two taxi drivers were its employees and therefore engaged in services covered by Ohio's unemployment compensation law.

On December 16, 2013, Appellant appealed the Commission's decision to this Court pursuant to R.C. 4141.26(D)(2).

**Standards of Appellate Review**

A common pleas court's standard of review for appeals from Commission decisions affecting an employer's liability to pay unemployment compensation contributions, or the amount of such contributions, is set forth in R.C. 4141.26(D)(2), which states in pertinent part that a common pleas court may affirm a Commission decision "if it finds, upon consideration of the entire record, that the determination or order is supported by reliable, probative, and substantial evidence and is in accordance with law." *BRT Transport, LLC v. Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 14AP-800, 2015-Ohio-2048, ¶ 15.

In determining whether evidence is reliable, probative, and substantial, a trial court must appraise the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof. *Evans v. Dir., Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 14AP-743, 2015-Ohio-3842, ¶ 12. "Reliable" evidence is dependable; that is, it can be confidently trusted. *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St. 3d 570, 571 (1992). "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. *Id.* "Substantial" evidence is evidence with some weight; it must have importance and value. *Id.*

The Supreme Court of Ohio has held that a common pleas court must give due deference to the administrative resolution of evidentiary conflicts. *AWL Transport, Inc. v. Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 15AP-674, 2016-Ohio-2954, ¶ 9. For example, when the evidence before the court consists of conflicting testimony of approximately equal weight, the court should defer to the determination of the administrative body, which, as the fact-finder, had the opportunity to observe the demeanor of the witnesses and weigh their credibility. *Id.* In addition, administrative agencies have the discretion to promulgate and interpret their own rules,

and a reviewing court should give due deference to statutory interpretations by an administrative agency that has substantial experience and has been delegated enforcement responsibility.

*Pennex Aluminum Co., LLC v. Dir., Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 14AP-446, 2014-Ohio-5308, ¶ 10.

### Analysis

In *BRT Transport, LLC*, 2015-Ohio-2048, ¶ 15, the Tenth District Court of Appeals held:

Ohio law requires employers to make contributions into Ohio’s unemployment compensation fund. R.C. 4141.09; R.C. 4141.23. ODJFS maintains a separate account for each employer’s contributions and determines the rate at which an employer must make contributions into that account. R.C. 4141.24; R.C. 4141.25. The contribution rate is applied to the wages paid by the employer. See R.C. 4141.25. Thus, an important part of this process is determining whether individuals performing services for an employer are employees or independent contractors. For the purpose of contributions into Ohio’s unemployment compensation fund, an employer includes a limited liability company that has “in employment at least one individual.” R.C. 4141.01(A)(1)(a).

An employer bears the burden of proving that a worker is not an employee and, thus, that it need not contribute to the unemployment compensation fund. *BRT Transport, LLC*, ¶ 17, citing *Miracle Home Health Care, L.L.C. v. Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 12AP-318, 2012-Ohio-5669, ¶ 21.

Revised Code 4141.01(B)(1) defines “employment” as follows:

[S]ervice performed by an individual for remuneration under any contract of hire, written or oral, express or implied, \*\*\* unless it is shown to the satisfaction of the director that such individual has been and will continue to be free from **direction or control** over the performance of such service, both under a contract of service and in fact. The director shall adopt rules to define “direction or control.” (Emphasis added.)

Consistent with the statutory definition of employment, Ohio Adm. Code 4141-3-05(A) provides:

\*\*\* [A] worker is in employment when an “employer-employee” relationship exists between the worker and the person for whom the individual performs services and the director determines that:

- (1) The person for whom services are performed has **the right to direct or control** the performance of such services; and
- (2) Remuneration is received by the worker for services performed. (Emphasis added.)

Ohio Adm. Code 4141-3-05(B) sets forth twenty factors as guides for determining whether sufficient direction or control exists to create an employer-employee relationship. *BRT Transport, LLC*, 2015-Ohio-2048, ¶ 18. The factors, which “must be considered in totality,” are as follows:

- (1) The worker is required to comply with the instructions of the person for whom services are being performed, regarding when, where, and how the worker is to perform the services;
- (2) The person for whom services are being performed requires particular training for the worker performing services;
- (3) The services provided are part of the regular business of the person for whom services are being performed;
- (4) The person for whom services are being performed requires that services be provided by a particular worker;
- (5) The person for whom services are being performed hires, supervises, or pays the wages of the worker performing services;
- (6) A continuing relationship exists between the person for whom services are being performed and the worker performing services that contemplates continuing or recurring work, even if not full time;
- (7) The person for whom services are being performed requires set hours during which services are to be performed;

(8) The person for whom services are being performed requires the worker to devote himself or herself full time to the business of the person for whom services are being performed;

(9) The person for whom services are being performed requires that work be performed on its premises;

(10) The person for whom services are being performed requires that the worker follow the order of work set by the person for whom services are being performed;

(11) The person for whom services are being performed requires the worker to make oral or written progress reports;

(12) The person for whom services are being performed pays the worker on a regular basis such as hourly, weekly, or monthly;

(13) The person for whom services are being performed pays expenses for the worker performing services;

(14) The person for whom services are being performed furnishes tools, instrumentalities, and other materials for use by the worker in performing services;

(15) There is a lack of investment by the worker in the facilities used to perform services;

(16) There is a lack of profit or loss to the worker performing services as a result of the performance of such services;

(17) The worker performing services is not performing services for a number of persons at the same time;

(18) The worker performing services does not make such services available to the general public;

(19) The person for whom services are being performed has a right to discharge the worker performing services;

(20) The worker performing services has the right to end the relationship with the person for whom services are being performed without incurring liability pursuant to an employment contract or agreement.

“When present, each of these factors serves to indicate some degree of direction or control.” Ohio Adm. Code 4141-3-05(B). “The degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed.” *Id.*

Applying the twenty factors set forth in Ohio Adm. Code 4141-3-05(B) to the evidence in this case, the Court finds that there is reliable, probative, and substantial evidence to support the Commission’s determination that Appellant’s thirty-two taxi drivers were its employees and therefore engaged in services covered by Ohio’s unemployment compensation law.

**Factor 1: The worker is required to comply with the instructions of the person for whom services are being performed, regarding when, where, and how the worker is to perform the services.**

When a passenger needs transportation, the passenger calls Appellant and speaks with a dispatcher. *T. 16-17, 20, 27-28.* The dispatcher then calls Appellant’s “lead” taxi driver to pick up and transport the passenger. *T. 20.* If the lead driver is not available to take the passenger, the dispatcher calls the next driver on Appellant’s roster. *T. 20-21, 28.* Appellant requires the drivers to pick up the passengers and transport them to their destinations. *ODJFS Exhibit (Ex.) E.* If a passenger needs to be at a medical appointment at a particular time, Appellant’s driver must transport the passenger on time. *T. 31.* The driver may not change the time when the passenger is to be delivered to the destination. *T. 31.*

**Factor 2: The person for whom services are being performed requires particular training for the worker performing services.**

Appellant’s taxi drivers are required to be licensed to operate a motor vehicle and they must be physically able to operate a motor vehicle. *T. 25; ODJFS Ex. E.* Appellant’s drivers are reviewed by Appellant’s insurance company to determine whether they are insurable. *T. 25.*

**Factor 3: The services provided are part of the regular business of the person for whom services are being performed.**

The service provided by Appellant's taxi drivers, transporting disabled individuals to and from medical appointments, is Appellant's regular business. *ODJFS Ex. E.* In a July 23, 2012 letter to ODJFS, Appellant characterized the service provided by its drivers as "an integral part of the business." *ODJFS Ex. D.*

**Factor 4: The person for whom services are being performed requires that services be provided by a particular worker.**

Appellant requires that the taxi services be provided only by its drivers, and not by other individuals. *ODJFS Ex. E.* For example, if one of Appellant's drivers agrees to transport a passenger, but then discovers that he or she cannot perform the service, the driver is not permitted to secure a substitute driver to transport the passenger. *T. 31-32.* Only a driver who is named on Appellant's insurance policy may drive one of Appellant's vehicles. *T. 31-32.*

**Factor 5: The person for whom services are being performed hires, supervises, or pays the wages of the worker performing services.**

Appellant hires its taxi drivers and pays their compensation. *T. 20-21, 23, 25, 29-30; ODJFS Ex. E.*

**Factor 6: A continuing relationship exists between the person for whom services are being performed and the worker performing services that contemplates continuing or recurring work, even if not full time.**

A continuing relationship exists between Appellant and its taxi drivers, which relationship contemplates continuing or recurring work, even if not full time. The continuing nature of the relationship is demonstrated by the fact that Appellant maintains a roster of drivers whom Appellant calls when a driver is needed to transport a passenger, by the fact that the drivers keep Appellant's vehicles at their homes at night, and by the fact that Appellant's drivers

are named on Appellant's insurance policy, as they must be in order to operate Appellant's vehicles. *T. 17, 20-21, 25, 28, 30.*

**Factor 7: The person for whom services are being performed requires set hours during which services are to be performed.**

Appellant's office is open from 8 a.m. to 4 p.m., but a dispatcher is available twenty-four hours a day, seven days a week, to dispatch taxi drivers as needed by passengers. *T. 19, 27-28.*

**Factor 8: The person for whom services are being performed requires the worker to devote himself or herself full time to the business of the person for whom services are being performed.**

There is no evidence that Appellant requires its taxi drivers to devote themselves full time to Appellant's business.

**Factor 9: The person for whom services are being performed requires that work be performed on its premises.**

The nature of Appellant's business does not require Appellant's taxi drivers to perform their work on Appellant's premises.

**Factor 10: The person for whom services are being performed requires that the worker follow the order of work set by the person for whom services are being performed.**

As stated above, when a passenger needs transportation, the passenger calls Appellant and speaks with a dispatcher. *T. 16-17, 20, 27-28.* The dispatcher then secures one of Appellant's taxi drivers to transport the passenger. *T. 20-21, 28; ODJFS Ex. E.* If the passenger needs to be at a medical appointment at a particular time, Appellant's driver must transport the passenger on time and may not change the time when the passenger is to be delivered to the destination. *T. 31.*

**Factor 11: The person for whom services are being performed requires the worker to make oral or written progress reports.**

Appellant requires its taxi drivers to submit written confirmation to Appellant that they have transported their passengers. *ODJFS Ex. E.*

**Factor 12: The person for whom services are being performed pays the worker on a regular basis such as hourly, weekly, or monthly.**

When a taxi driver delivers a passenger to a destination, the passenger gives the driver a government voucher, which the driver then submits to Appellant. *T. 20, 29-30.* The passenger does not pay the driver. *T. 29.* Appellant submits the vouchers collected by its drivers to the government agency for payment, and the agency pays Appellant based on the vouchers that Appellant submits to the agency. *T. 30.* Appellant then pays its drivers fifty percent of Appellant's collections. *T. 20-21, 25, 29-30; ODJFS Ex. E.* The drivers receive a weekly paycheck from Appellant, which the drivers pick up at Appellant's location on Reed Road. *T. 23; ODJFS Ex. E.*

**Factor 13: The person for whom services are being performed pays expenses for the worker performing services.**

Although Appellant's taxi drivers are responsible for buying gasoline for the vehicles, Appellant pays to insure, maintain, and repair the vehicles. *T. 17, 21, 23-26.*

**Factor 14: The person for whom services are being performed furnishes tools, instrumentalities, and other materials for use by the worker in performing services.**

Appellant owns, insures, maintains, and repairs all of the vehicles, and furnishes the vehicles to the taxi drivers. *T. 17, 21, 23-26; ODJFS Ex. D, ODJFS Ex. E.* Each vehicle displays a vinyl logo that identifies the vehicle as belonging to "Wheels To Go." *T. 18, 28.*

**Factor 15: There is a lack of investment by the worker in the facilities used to perform services.**

Appellant's taxi drivers have no investment in any of the facilities used to perform transportation services for Appellant. *T. 17-19, 21, 23-26; ODJFS Ex. E.*

**Factor 16: There is a lack of profit or loss to the worker performing services as a result of the performance of such services.**

There is no evidence that Appellant's taxi drivers share in Appellant's profits or losses.

**Factor 17: The worker performing services is not performing services for a number of persons at the same time.**

Appellant's taxi drivers perform transportation services for one passenger at a time. *T. 16-17, 20-21, 27-28.* They are not at liberty to pick up another passenger if someone flags them down on the street. *T. 22-24.*

**Factor 18: The worker performing services does not make such services available to the general public.**

As stated above, Appellant's taxi drivers are not permitted to pick up other passengers if the drivers are hailed on the street. *T. 22-24.*

**Factor 19: The person for whom services are being performed has a right to discharge the worker performing services.**

Appellant has the right to discharge its taxi drivers from their employment. *ODJFS Ex. E.*

**Factor 20: The worker performing services has the right to end the relationship with the person for whom services are being performed without incurring liability pursuant to an employment contract or agreement.**

Appellant's taxi drivers have the right to end their relationship with Appellant, without incurring liability pursuant to an employment contract or agreement. *T. 33; ODJFS Ex. E.*

**Conclusion**

When the Court considers the twenty factors in their totality, the Court concludes that there is reliable, probative, and substantial evidence that Appellant had the right to direct or control its taxi drivers in the performance of their services for Appellant. Appellant failed to sustain its burden of proving that the drivers were not its employees. Accordingly, Appellant failed to demonstrate that it was not obligated to contribute to the unemployment compensation fund.

Having considered the entire record on appeal, the Court finds that the November 21, 2013 Decision of the Ohio Unemployment Compensation Review Commission, affirming the Director's Reconsidered Decision, is supported by reliable, probative, and substantial evidence and is in accordance with law. The Decision is therefore **AFFIRMED**.

This is a final, appealable Order. Costs to Appellant. Pursuant to Civ. R. 58, the Franklin County Clerk of Courts shall serve notice of this judgment and its date of entry upon all parties.

Copies electronically transmitted to all counsel of record.

Franklin County Court of Common Pleas

**Date:** 07-26-2017

**Case Title:** DUBLIN EXPRESS TRANSPORT SOLUTIONS LTD -VS- OHIO  
STATE DEPARTMENT JOB & FAMILY SERVI

**Case Number:** 13CV013521

**Type:** DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink is written over a circular official seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY OHIO" around the perimeter, and "ALL THINGS ARE POSSIBLE" at the bottom. The signature is a cursive script that appears to read "Jeffrey M. Brown".

/s/ Judge Jeffrey M. Brown

Court Disposition

Case Number: 13CV013521

Case Style: DUBLIN EXPRESS TRANSPORT SOLUTIONS LTD -  
VS- OHIO STATE DEPARTMENT JOB & FAMILY SERVI

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes