Dhillon v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2021 BCSC 174
Result	Petition dismissed
Judge	Madam Justice Sharma
Date of Judgment	February 4, 2021
WCAT Decision Reviewed	WCAT Decision No. A1901124 (September 25, 2019)

Keywords

Judicial review – Standard of review – Patent Unreasonableness – Section 257 [now 311] of the Workers Compensation Act – Policy items # C3-14.00, # C3-19.00 of the Rehabilitation Services and Claims Manual Vol. II – Traveling employees – Arising out of and in the course of employment

Background and reasons of the B.C. Supreme Court

The Workers' Compensation Appeal Tribunal (WCAT) decision numbered A1901124, issued September 25, 2019 (the "WCAT Decision"), was a determination made pursuant to section 257 of the *Workers Compensation Act* [RSBC 1996], c. 492 (now section 311 of the *Workers Compensation Act* [RSBC 2019], c. 1).

Ms. Dhillon and Mr. Shaheem were involved in a motor vehicle accident. Ms. Dhillon commenced an action against Mr. Shaheem for injuries sustained in that accident. Mr. Shaheem sought a determination from WCAT that both he and Ms. Dhillon were engaged in the scope of their employment at the time of the accident.

The WCAT panel found that Ms. Dhillon was a care aide that provided assistance to clients in their homes. The motor vehicle accident occurred when she was driving home, after leaving her last client of the day.

The panel found that at the time of the accident, Ms. Dhillon was a worker. Ms. Dhillon was a travelling employee. Pursuant to Board policy #C3-19.00 "Work Related Travel" and previous WCAT decisions, travelling employees are generally within the course of their employment from the time they leave home in the morning until they return home at the end of the workday, subject to a major deviation for personal reasons. The panel concluded that Ms. Dhillon was in the course of her employment at the time of the accident while driving from the home of her last client to her home. Thus, any injury

suffered by her arose out of and in the course of her employment.

Mr. Shaheem was a tow truck driver. The panel accepted that at the time of the accident, Mr. Shaheem was a worker. He was also a travelling employee. The panel accepted that, prior to the accident, Mr. Shaheem had towed a vehicle from one body shop owned by his employer to another, and was heading home when the accident occurred. The panel concluded that Mr. Shaheem was in the course of his employment when the accident occurred. Thus, any action or conduct of Mr. Shaheem, which caused the alleged breach of duty of care, arose out of and in the course of his employment.

The court found that the WCAT Decision was not patently unreasonable. WCAT's interpretation of policy C3-19.00, as providing door-to-door coverage for travelling employees, was not patently unreasonable. In referring to previous WCAT decisions, the panel identified that the reasoning in those decisions was consistent with its own, and thus it agreed with those decisions. The panel did not simply adopt the reasoning from these previous decisions and thereby fail to exercise its own decision making authority.

There was some evidence to support the panel's conclusion that Mr. Shaheem was driving home from work at the time of the accident. The fact that there was no documentary evidence corroborating Mr. Shaheem's evidence in discovery that he was driving home from a tow job was not determinative. Statutory decision makers, including WCAT, are entitled to draw inferences from the evidence before them. In this case, WCAT did just that. That inference was not patently unreasonable.

The court dismissed the petition.