

# Northern Thunderbird Air Inc. v. British Columbia (Workers' Compensation Appeal Tribunal)

## Decision Summary

Court	B.C. Supreme Court
Citation	2016 BCSC 1216
Result	Judicial Review Denied
Judge	Madam Justice Baker
Date of Judgment	July 4, 2016
WCAT Decision(s) Reviewed	WCAT-2015-00533 WCAT-2015-00534

### **Keywords**

*Judicial review – Standard of review – Patently unreasonable – Section 257 certificates – Section 257 of the Workers Compensation Act – Section 5 of the Workers Compensation Act – Policy items C3-14.00 and C3-21.00 of the Rehabilitation Services and Claims Manual, Volume II – Whether injuries suffered by passengers in an airplane travelling to a business executive peer coaching group function arose out of and in the course of employment*

*Judicial review – Standard of review – Patently unreasonable – Adequacy of reasons – Whether reasons allow reviewing court to understand why tribunal made its decision*

### **Summary:**

Passengers injured in an airplane accident were all members of a business executive peer coaching group on their way to a retreat. The Workers' Compensation Appeal Tribunal (WCAT) was asked to determine the status of the passengers under section 257 of the *Workers Compensation Act*. WCAT reviewed the factors relevant to work-relatedness set out in Workers' Compensation Board (Board) policies C3-14.00 and C3-21.00 and determined that the evidence weighed in favour of finding that the passengers were not in the course of their respective employments when they were injured. The airline sought judicial review of WCAT's decision on the basis that the tribunal failed to properly analyze the critical issues. The Court disagreed with the petitioner, finding that the decision sets out WCAT's path of reasoning and demonstrates careful weighing of the evidence and application of law and policy to the facts as found.

Policy C3-14.00 of the Board's *Rehabilitation Services and Claims Manual* is the

principal policy addressing whether an injury arises out of and in the course of a worker's employment. The policy provides a non-exhaustive list of factors an adjudicator may consider in determining whether an injury is compensable. Policy C3-21.00 is entitled "Extra-Employment Activities". One of the topics covered by this policy is educational or training courses. The policy provides that, as a general rule, compensation does not extend to injuries that occur during such courses. However, an exception arises where the course is sufficiently connected to the worker's employment. WCAT observed that although there were some factors favouring the position of the airline, the weight of the evidence led to the tribunal to conclude that the passengers participated in the group and the retreat for predominantly personal reasons.

The airline argued that WCAT failed to address or engage with the evidence that the passengers used the peer coaching group for purposes specific to their work. The airline said that WCAT's decision was inadequate and unclear. The Court noted that the Supreme Court of Canada's judgment in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador*, 2011 SCC 62, established that a court does not conduct a separate review for the adequacy of reasons. In this case, the Court found that WCAT's reasons allowed the Court to understand why the tribunal made its decision. Ultimately, the Court was satisfied that there was evidence supporting the conclusion reached by WCAT and, therefore, the petitioner had failed to establish that the decision was patently unreasonable.