

Aujero v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Supreme Court
Citation	2018 BCSC 764
Result	Judicial Review Dismissed
Judge	Mr. Justice Johnston
Date of Judgment	May 11, 2018
WCAT Decision(s) Reviewed	A1603732

Keywords:

Judicial review – Standard of review – Patent unreasonableness – Workers Compensation Act, sections 5(1) and 257 – Policy item C3-19.00 of the Rehabilitation Services and Claims Manual, Volume II – Whether a travelling employee who has not yet started their shift is in the course of their employment while travelling to their first assignment of the day

Judicial review – Standard of review – Patent unreasonableness – Workers Compensation Act, sections 5(1) and 257 – Policy item C3-17.00 of the Rehabilitation Services and Claims Manual, Volume II – Whether a traffic violation is a substantial deviation from employment

Summary:

The court determined that the Workers' Compensation Appeal Tribunal (WCAT) was not patently unreasonable in making two findings respecting a motor vehicle accident. The first was that a home care worker on her way to her first client of the day was in the course of her employment notwithstanding that she was not being paid until she arrived at her client's home. The second finding was that the other driver did not substantially deviate from his employment when he ran a red light.

The petitioner is the plaintiff in a motor vehicle action. She was driving from her own home to the home of her first client of the day when the accident occurred. Guided by policy C3-19.00 of the *Rehabilitation Services and Claims Manual*, WCAT found that the petitioner was a *travelling employee*. That same policy says that travelling employees are generally considered to be travelling in the course of their employment from the time they commence travel on a public roadway.

The other driver was operating his employer's van and was on his way from the company's mill to pick up some co-workers before heading to a jobsite. The petitioner

had argued that this driver (*i.e.*, a defendant in the civil action) was in the course of his employment while driving up until the moment when he ran a red light. According to the petitioner, no illegal conduct can ever be conduct arising from employment and the running of the light was a substantial deviation from the defendant's employment. Noting that one of the principles of workers' compensation legislation is that compensation be provided without regard to fault, WCAT reasoned that it would be wrong to find that the defendant's negligence constituted a substantial deviation from his employment. The court's reasons for judgment also rejected the petitioner's argument that the defendant's actions amounted to an assault upon her.

The court dismissed the petition.