

Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Court of Appeal
Citation	2018 BCCA 387
Result	Appeal Dismissed
Judges	Mr. Justice Groberman Madam Justice Garson Madam Justice Dickson
Date of Judgment	October 19, 2018
WCAT Decision(s) Reviewed	A1603285

Keywords:

Appeal – Judicial review – Out of province injuries – Sections 5, 5.1, and 8 of the Workers Compensation Act – Sufficient connection to British Columbia – Items #112.11 and #112.20 of the Rehabilitation Services and Claims Manual, Volume II

Appeal – Judicial review – Patent unreasonableness – Importance of tribunal's reasons on judicial review

Appeal – Judicial review – When evidence not before the tribunal is admissible on judicial review

Summary:

The Court of Appeal dismissed the appeal of the Workers' Compensation Appeal Tribunal (WCAT) from an order allowing petitions for judicial review of a WCAT decision. WCAT had determined that section 8 of the *Workers Compensation Act* precluded compensation of a flight attendant who lived outside of British Columbia and was injured outside of British Columbia, even though her work was based at Vancouver International Airport. The court found that WCAT's interpretation of the relevant law and policy was patently unreasonable. The appropriate remedy was to remit the matter to WCAT for reconsideration. It was inappropriate for the court below to direct WCAT as to how it should interpret the *Workers Compensation Act*.

The Court of Appeal said that despite confusion in the case law, judicial review must be applied to both the result of an exercise of administrative authority *and* to the reasons leading to the result. The court found that WCAT's statutory interpretation exercise failed

to consider the underlying purposes of the statute, failed to take into account the context of section 8, and failed to refer to binding policies of the Workers' Compensation Board (Board). In the opinion of the court, policy items #112.11 and #112.20 suggest that section 8 of the *Workers Compensation Act* is not a limitation on rights to compensation, but rather an extension of the rights granted in sections 5 and 5.1 to situations that are not directly governed by those provisions.

Although the court dismissed WCAT's appeal, it agreed with WCAT that the affidavit evidence tendered by Air Canada and the Board was inadmissible on judicial review. Because courts on judicial review are not undertaking a fresh examination of the substantive issues, there is a general rule that only evidence that was before the tribunal can be considered on judicial review. The general rule admits a number of exceptions, provided always that evidence is only admissible on judicial review if it is consistent with the limited supervisory jurisdiction of the court. So-called "general background information" will be admissible only if it is confined to what the tribunal actually knew or acted upon (such as evidence that educates the court on matters that are within the specialized expertise of a tribunal or that summarizes or condenses the record in a neutral manner). A reviewing court must not accept affidavits, such as those tendered in this case, that simply seek to shore up weaknesses in the record.

The Court of Appeal also disagreed with the lower court in respect of the latter's finding that WCAT failed to consider evidence that the worker's injury may have happened inside the province, after the aircraft had landed. The Court of Appeal held that it was not patently unreasonable for WCAT to conclude that the traumatic event occurred outside the province, during the flight.