Air Canada v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2017 BCSC 1609
Result	Judicial Review Allowed
Judge	Mr. Justice G.C. Weatherill
Date of Judgment	September 12, 2017
WCAT Decision(s) Reviewed	A1603285

Keywords:

Judicial review – Out of province injuries – Sections 5 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

Judicial review – Evidence – Failure to consider potentially relevant evidence patently unreasonable

Summary:

The worker, a flight attendant, lived in another province but worked out of the Vancouver International Airport (YVR). She claims to have suffered a compensable mental stress injury arising from events that began while she was working on a flight from Asia returning to YVR. The Workers' Compensation Board, operating as WorkSafeBC (Board), accepted the worker's claim and the employer appealed to the Workers' Compensation Appeal Tribunal (WCAT). WCAT concluded that if the worker was injured, the injury happened while the flight was outside of British Columbia and because the worker did not reside in B.C., the worker was not entitled to compensation because of section 8 of the *Workers Compensation Act*, which says that where the injury of a worker occurs while the worker is working elsewhere than in B.C., the Board must pay compensation if, among other things, the residence of the worker is in the province, but not otherwise. The court held that WCAT's decision was patently unreasonable because it did not consider Board policy, which says that in some circumstances, an injury to a worker outside B.C. may be compensable without the need to consider section 8 and because WCAT did not consider evidence that the alleged injury may have happened inside the province.

Board policy items #112.11 and #112.20 require consideration of where the worker was performing their main job functions at the time they were injured, regardless of whether they were in fact injured outside of the province. Where the main job functions are performed inside the province, it must be said that the injury arouse out of and in the

course of employment within the province and therefore covered under sections 5 or 5.1, without the need to consider whether the injury is one which is covered by section 8. The court found that WCAT's failure to consider the application of this policy rendered the decision patently unreasonable.

The court held that an interpretation of section 8 of the *Workers Compensation Act* that it was intended to negate coverage to a worker who has a sufficient connection to British Columbia is inconsistent with the object and intention of workers' compensation legislation. Such an interpretation produces absurd consequences where a worker with a sufficient connection to the province (in this case, the worker was hired in, was paid in, and worked in B.C.) is left without workers' compensation coverage because they happen to reside in another province.

There was also evidence in the record that was capable of supporting a conclusion that the alleged injury occurred after the flight had landed at YVR and, therefore, that the injury may have happened inside the province such that there was no need to consider the application of section 8 of the *Act*. The court held that WCAT's failure to consider this evidence was also patently unreasonable.

For these reasons, the court allowed the petitions for judicial review.

In the course of considering the petitions, the court rejected WCAT's argument that the employer and worker were raising new arguments for the first time on judicial review, contrary to a principle established in earlier court decisions. The judge distinguished these earlier cases on the basis that the parties in this case were addressing an issue that was squarely before WCAT.

The court also allowed the parties to introduce evidence at the hearing of the petitions, which had not been put before WCAT. Despite the general rule that such new evidence cannot be admitted on judicial review, the court found that the evidence in this case fell within one of the limited exceptions to the general rule because it merely provided general background information which assisted the court in understanding the issues on judicial review.