

Combs v. Teck Cominco Metals Ltd.

Decision Summary

Court	B.C. Supreme Court
Citation	2014 BCSC 572
Result	Judicial Review Denied
Judge	Madam Justice Maisonville
Date of Judgment	May 3, 2014
WCAT Decision(s) Reviewed	WCAT-2012-02569

Keywords:

Judicial review – Section 257 determination – Whether a person is a “worker” under the Workers Compensation Act – Jurisdiction of Workers’ Compensation Appeal Tribunal – Constitutional applicability of the Act – Extra-jurisdictional effect – Sufficient connection to province – Policy AP1-2-1 of the Assessment Manual of the Workers’ Compensation Board

Summary:

The petitioner, a United States citizen and a resident of Washington State, was employed as a hazardous materials truck driver by an American company. Approximately once a week on average the petitioner picked up industrial gases at a facility in British Columbia and delivered them to locations in the United States. He spent three and a half hours in the province during each trip. The petitioner claimed that in the course of one trip he was injured when he was exposed to hazardous gases at the site. He received worker’s compensation benefits in Washington State.

In British Columbia Supreme Court the petitioner sued the company operating the gas production facility (which was related to the company that employed him) and a second company that owned and operated the site upon which the facility was located. The second company applied to the Workers’ Compensation Appeal Tribunal (WCAT) under section 257 of the *Workers Compensation Act* for certain determinations relevant to the lawsuit.

WCAT determined that the petitioner was a “worker” under the Act. It applied policy AP1-2-1 of the *Assessment Manual* of the Workers’ Compensation Board (operating as WorkSafeBC), which provides, in part, rules for determining whether certain employers in the trucking industry only temporarily carrying on business in the province are exempt from coverage under Part 1 of the Act. The policy sets out thresholds for the number of visits and working days in the province such an employer can have in order to remain exempt. WCAT determined that the petitioner’s employer exceeded those thresholds.

On judicial review, the court determined that WCAT’s decision was not patently unreasonable. The primary issue however was whether the Act was constitutionally applicable to the petitioner. The constitutional question turned on whether the application of the Act to the petitioner (by finding him to be a “worker” under the Act) gave the Act impermissible extra-jurisdictional effect.

Constitutionally, the Act cannot apply to a person who lacks a “sufficient connection” to the province. The court determined that WCAT had not determined the constitutional question as it did not have jurisdiction to consider constitutional questions.

Applying the sufficient connection test, the court found that the Act was constitutionally applicable to the petitioner. He was working in the province at the time of the accident, the injury clearly arose at the employer’s plant, the purpose of his trip was work and he took frequent work trips into the province. His presence in the province was not simply transitory as the province was not merely a corridor for the work performed but his loading site. The court found that the requirements of “order and fairness” did not otherwise prevent the application of the Act as it would not create a multiplicity of competing exercises of state power given that a finding that he was a worker in the province would not affect his rights outside of the province.

The court also determined that the exemption portion of policy AP1-2-1 cannot be constitutionally invalid as it does not purport to govern the application of the Act for constitutional purposes. The exemption portion of the policy applies only to worker and employers who are not otherwise constitutionally excluded from application of the Act. The exclusion portion leaves open the possibility that there may be other types of workers and employers to whom the Act will not apply for constitutional law reasons.

The judicial review was denied.