

Macrae v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2016 BCSC 133
Result	Judicial Review Denied
Judge	Mr. Justice Burnyeat
Date of Judgment	January 28, 2016
WCAT Decision(s) Reviewed	WCAT-2011-01330

Keywords

Judicial review – Standard of review – Patently unreasonable – Section 257 certificates – Section 257 of the Workers Compensation Act – Whether a vehicle owner an employer engaged in an industry within the meaning of Part 1 of the Workers Compensation Act

Judicial review – Workers' Compensation Appeal Tribunal decision-making – Section 250(2) of the Workers Compensation Act – Application of policies of the Workers' Compensation Board – Policy item AP1-1-4 of the Assessment Manual – Practice directive 1-38-2(A) – Active principal a worker employed by company

Judicial review – Evidence admissible in Workers' Compensation Appeal Tribunal proceedings – Section 246.1 of the Workers Compensation Act – Hearsay

Summary:

The Workers' Compensation Appeal Tribunal (WCAT) had determined that the owner of a vehicle involved in an accident was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act (Act)*. This determination, made pursuant to WCAT's authority under section 257 of the *Act*, was relevant to an action for negligence arising from the motor vehicle accident. The vehicle owner was a company that did not appear to employ anyone, including the vehicle's driver, under a contract of employment. Neither was the vehicle owner registered as an employer with the Workers' Compensation Board (Board). The petitioner argued that the company that owned the vehicle was therefore not an employer for the purposes of the *Act*. WCAT found that one or both of the company's shareholders must have been a worker for the company. The Court concluded that WCAT's decision could not be said to be patently unreasonable and dismissed the petition for judicial review.

WCAT noted the Board's policy item AP1-1-4 and practice directive 1-38-2(A) to be instructive. The policy states that as an incorporated entity is considered the employer;

a director, shareholder, or other principal who is active in the business operations of the company is generally considered to be a worker under the *Act*. The practice directive explains that an individual is active in a company if they take action on behalf of the company. However, the policy provides for an exception where the active principal is injured at a time when the company was not registered as an employer with the Board. The petitioner urged that because the company was not registered with the Board as an employer, neither of the company's principals could be found to be workers and, therefore, it could not be said that the company was an employer. The petitioner argued that WCAT was bound by this interpretation of policy item AP1-1-4, which he submitted is supported by other decisions of the tribunal. The WCAT panel disagreed and adopted from another WCAT decision the interpretation that this exception does not apply in circumstances that are not concerned with an injury to a principal of the unregistered company.

The Court confirmed that WCAT is entitled to deference with respect to its application and interpretation of Board policy. The Court also noted that even if other WCAT decisions in the past had interpreted the policy differently, section 250(1) of the *Act* establishes that WCAT is not bound by previous decisions and as long as WCAT's interpretation of a policy is not clearly irrational, it cannot be said to be patently unreasonable solely on the basis that it departed from previous decisions.

The petitioner also argued that, in any event, there was no evidence upon which WCAT could find that either of the two shareholders of the company was active in its operation. Before WCAT, the involvement of the shareholders in the company was explained by hearsay evidence of the company's general counsel. Both the WCAT panel and the Court noted that section 246.1 of the *Act* permits WCAT to accept information that it considers relevant, necessary, and appropriate whether or not the information would be admissible in a court. The Court in this case found that WCAT was entitled to rely on the evidence it did to arrive at its decision.