

TALLARICO V. WORKERS' COMPENSATION APPEAL TRIBUNAL

Decision Summary

Court	B.C. Supreme Court
Citation	2009 BCSC 49
Result	Judicial Review Dismissed
Judge	Mister Justice Goepel
Date of Judgment	January 22, 2009
WCAT Decision(s) Reviewed	WCAT-2007-02706

Keywords:

Loss of earnings – Section 23(3) of the Workers Compensation Act – Standard of review – Patent unreasonableness – Section 58 of the Administrative Tribunals Act – Consideration of Dunsmuir v. New Brunswick, 2008 SCC 9

This was a petition for judicial review of a decision by the Workers' Compensation Appeal Tribunal (WCAT) which considered the Petitioner's claim for a loss of earnings award. The Court also addressed how patent unreasonableness in section 58 of the Administrative Tribunal Act (ATA) is to be defined in light of *Dunsmuir v. New Brunswick*, 2008 SCC 9.

The Petitioner was injured in a workplace accident which left him unable to work as a truck driver. The Workers' Compensation Board, operating as WorkSafeBC, determined that the Petitioner was permanently partially disabled as a result of the accident. He was awarded a 14.54% permanent functional impairment award. The Petitioner also sought a loss of earnings (LOE) award under s. 23(3) of the *Workers Compensation Act*. The claim for the loss of earnings award was denied on the basis that he could perform light assembly work, and such positions could restore him to his pre-injury earnings and were readily available. The Petitioner's appeal to WCAT was denied as the panel found that suitable employment was reasonably available to the Petitioner over the long term and that this employment would restore the Petitioner's earnings to a pre-injury level, such that he would suffer no loss of earnings.

The Court dismissed the judicial review application. The Court found that *Dunsmuir v. New Brunswick*, 2008 SCC 9 had not affected the standard of review set out in the ATA, and the applicable standard was that of patent unreasonableness. The Court concluded that the decision of WCAT was not patently unreasonable as there was a rational basis for the conclusion reached on the evidence before the tribunal. The record indicated that there was evidence of suitable jobs that were likely reasonably available over the long term.