Northern Thunderbird Air Inc. v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Court of Appeal
Citation	2017 BCCA 60
Result	Appeal denied
Judges	Chief Justice Bauman, Mr. Justice Willcock, Mr. Justice Fitch
Date of Judgment	February 1, 2017
WCAT Decisions Reviewed	WCAT-2015-00533, WCAT-2015-00534

Keywords:

Judicial review – Patent unreasonableness – Sections 5(1) and 257 of the Workers Compensation Act– Policy items #C3-14.00 and #C3-21.00 of the Rehabilitation Services Claims Manual Vol. II – Arising out of and in the course of employment – Section 257 determination

Summary:

The appellant, Northern Thunderbird Air (NTA), was the owner and operator of an aircraft that crash-landed at Vancouver International Airport. The individual respondents were a group of CEO's and executives heading to a weekend retreat run by The Executive Committee (TEC 335), and were passengers aboard the aircraft. The respondents were injured in the crash, and subsequently brought civil proceedings against NTA. In the civil proceedings, NTA argued that the respondents' injuries arose out of and in the course of employment, and therefore the bar in section 10 of the *Workers Compensation Act* (Act) applied.

NTA and the individual respondents applied to the Workers' Compensation Appeal Tribunal (WCAT) for a determination under section 257 of the Act about whether the respondents' injuries arose out of and in the course of employment. NTA argued to WCAT that the respondents participation in TEC 335, which was a coaching and mentoring group, involved business development, strategic planning, and the other types of activities normally performed by a CEO or executive. NTA argued that, because participation in TEC 335 involved performance of the respondents job duties, they were workers within the meaning of the Act and their injuries arose out of and in the course of employment.

WCAT determined that while the respondents[1] were workers at the time of the accident, their injuries did not arise out of and in the course of employment. In coming to this conclusion,

[1] WCAT did not find it necessary to determine whether or not the respondent Cross was a worker, given its conclusion that her injuries did not arise out of and in the course of employment. However, it presumed this fact for

WCAT found the retreat was best characterized as course for the respondents' own benefit and applied the general rule in policy item C3-21.00, which says that compensation coverage generally does not extend to training courses.

NTA brought a judicial review of the WCAT decision, and argued that WCAT did not adequately explain the basis for its determinations and decisions, and did not deal with a critical issue, leaving its reasoning unclear. The chambers judge dismissed the petition finding that WCAT's decision read as a whole demonstrated a careful consideration and weighing of the evidence, and application of the facts to the applicable statutory and policy provisions.

NTA appealed the decision of the chambers judge, and advanced essentially the same argument to the Court of Appeal. That is, NTA argued that 1) WCAT's finding of fact that participation in TEC 335 did not involve employment related activities was patently unreasonable, and 2) this finding was not adequately explained in WCAT's reasons.

Mr. Justice Willcock for the Court dismissed the appeal. Willcock J. found that WCAT was aware of the ways that the petitioner's used TEC 335 to enhance their job performance, and that WCAT's reasons adequately addressed the nexus between the TEC 335 functions and the employees' jobs. The Court found significant deference is owed to WCAT's findings of fact, and that WCAT's decision was not patently unreasonable.

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the purposes of its analysis. WCAT also determined that Lorelei Sobolik was not a worker. The latter point was not contested by NTA and Ms. Sobolik was not a respondent in the judicial review proceedings.