

Von Rummelhoff v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2015 BCSC 246
Result	Notice of civil claim struck and claim dismissed
Judge	Mr. Justice Punnett
Date of Judgment	January 9, 2015
Relevant WCAT Decisions	WCAT-2012-02605 (original decision); WCAT-2014-00502 (reconsideration decision)

Keywords:

Application for Compensation (Workers Compensation Act, s. 55) – Nature of pleadings – Notice of civil claim – Striking pleadings – Court’s jurisdiction on judicial review – Administrative Tribunals Act, s. 254(1); Judicial Review Procedure Act, s. 1

Summary:

The worker injured his arm in August 2009. He applied for compensation from the Workers' Compensation Board (the "Board") in September 2011. Section 55 of the *Workers Compensation Act*, (the Act), requires workers to file a claim for compensation within one year of the date of an injury. Section 55(3) of the Act grants the Board the discretion to consider a claim for compensation that was filed after expiration of that one-year period, if the Board is satisfied that there existed special circumstances which precluded the filing of an application within one year of the date of injury. Both the Board, and the Review Division of the Board upon review, found that there were no special circumstances that precluded the worker from filing an application for compensation within one year of his August 2009 injury. In other words, the Board found that the worker's claim was time barred by section 55 of the Act.

The worker appealed to WCAT. WCAT denied the worker's appeal, in its Original Decision. WCAT found that special circumstances did not preclude the worker from applying for compensation within one year of his August 2009 injury.

The worker subsequently filed a notice of civil claim. The court allowed WCAT's application to strike the notice of civil claim and dismiss the claim.

The court treated the notice of civil claim as challenging WCAT's section 55 decision, and seeking a monetary remedy for his claim for benefits.

The worker's claim had no reasonable prospect of success. First, when WCAT denied the worker's section 55 appeal in the Original Decision and determined that his claim was time-barred, it was exercising a statutory power. An exercise of a statutory power must be challenged by way of petition for judicial review of the decision in question, not by way of notice of civil claim.

Second, even if the proceeding had been a judicial review proceeding, the monetary remedy sought by the worker was beyond the court's jurisdiction. WCAT had considered the section 55 issue only. It had not considered the issue of the worker's entitlement to benefits. The court's jurisdiction on judicial review would be limited to ordering WCAT to reconsider its section 55 decision, because the court's jurisdiction on judicial review is generally limited to setting aside the tribunal decision and remitting it for reconsideration.

Alternatively, if the worker's claim was for damages, his claim had no reasonable prospect of success because WCAT cannot be sued for damages alleged or arising from the exercise of its statutory powers. Further, workers can only recover compensation for work-related injuries under the statutory benefits scheme established by the Act. They have no right to sue for damages at common law.

The court concluded that the worker's claim had no reasonable prospect of success. It struck out the notice of civil claim in its entirety, and dismissed the claim.