

West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Court of Appeal
Citation	2016 BCCA 473
Result	Appeal Dismissed
Judges	Madam Justice Newbury Mr. Justice Tysoe Mr. Justice Groberman
Date of Judgment	November 28, 2016
WCAT Decision(s) Reviewed	WCAT-2013-01952

Keywords

Appeal – Judicial review – Jurisdiction – Workers' Compensation Board's authority to make regulations – Section 225 of the Workers Compensation Act – Section 26.2 of the Occupational Health and Safety Regulation – Vires

Appeal – Judicial review – Occupational health and safety – Administrative penalty – Section 196 of the Workers Compensation Act – Basis for an employer's liability

Judicial review – Standard of review – Standard of patent unreasonableness applying to tribunal's interpretation of section 196 of the Workers Compensation Act

Summary:

This appeal involved two interconnected issues: i) the jurisdiction of the Workers' Compensation Board to make section 26.2 of the *Occupational Health and Safety Regulation* and ii) whether the Workers' Compensation Appeal Tribunal (WCAT) was patently unreasonable in confirming an administrative penalty levied against the petitioner for violation of the *Regulation*. In dismissing the employer's appeal, the Court concluded that the Board's regulation-making authority should be interpreted broadly in light of the purposes of occupational health and safety provisions of the *Workers Compensation Act* and that WCAT's interpretation that the *Act's* administrative penalty provision could apply to an *employer* that had failed in the responsibilities imposed upon it as an *owner* was not patently unreasonable.

The appellant operates a forest products business and contracted with an individual to fall some trees on a forest license owned by the appellant. The contractor hired another

faller to help him with the work. Sadly, that other person was fatally injured while doing the work. The Board investigated and determined that the appellant was in violation of section 26.2 of the *Occupational Health and Safety Regulation*, which requires the owner of a forestry operation to ensure that all activities of the operation are both planned and conducted safely. The Board also levied an administrative penalty against the appellant. The appellant argued that section 26.2 of the *Regulation* purports to impose obligations on an owner independent of the obligations imposed on owners under section 119 of the *Act* and, therefore, the Board lacked the jurisdiction to pass that section of the *Regulation*. The appellant also objected to WCAT's confirmation of the administrative penalty on the basis that such penalties can only be imposed upon employers and it was not acting in its capacity as an employer when it was found to have contravened the *Regulation*.

The Court of Appeal characterized the impugned regulation as manifestly one "respecting standards and requirements for the protection of the health and safety of workers and other persons present at a workplace and for the well-being of workers in their occupational environment" and therefore one authorized by the Board's regulation-making authority conferred by section 225 of the *Workers Compensation Act*.

After rejecting the appellant's argument that WCAT's interpretation should be reviewed on the standard of *correctness*, the Court held that WCAT's interpretation of section 196 could not be interfered with. The appellant argued that because an administrative penalty can only be levied against an employer, it was patently unreasonable for WCAT to find that such a penalty could be assessed against it because of a violation of its obligations as an owner. The Court observed that while the potential for treating an employer that is also an owner differently from a non-employer owner was "mildly curious" it was not absurd. The Court said that there were contextual arguments in favour of WCAT's finding and others in favour of the interpretation urged by the appellant but, because the statute is capable of supporting WCAT's interpretation, the Court cannot interfere with it.