

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20081204
Docket: 11313
Registry: Salmon Arm

**In the Matter of John Steeves WCAT Decision
#2007 00480 - February 8, 2007, WCAT Decision #2003 -
03236-RB - October 28, 2003, WCB, Gail Wills, WCB
Review Board directed by Attorney General**

Before: The Honourable Mr. Justice Truscott

Oral Reasons for Judgment

In Chambers
December 4, 2008

Counsel for Lavigne

Sherry Lavigne
(self-represented)

Counsel for WCAT

V.A. Pylypchuk

Place of Trial/Hearing:

Vancouver, B.C.

[1] **THE COURT:** The British Columbia Court of Appeal in *Lang v. British Columbia (Superintendent of Motor Vehicles)* 2005 BCCA 244 has set out that as a matter of law costs are not to be assessed against an administrative tribunal that exercises *quasi* judicial powers, such as the Workers' Compensation Appeal Tribunal does in this case, unless the Tribunal is guilty of misconduct or perversity in the proceedings that took place before the Tribunal, or the Tribunal argues the merits on the judicial review application rather than arguing the matter of its jurisdiction only.

[2] Here WCAT, if I may refer to the Workers Compensation Appeal Tribunal in that fashion, was not, in my opinion, guilty of any misconduct or perversity in its proceedings. Mr. Boal did not conduct an oral hearing because Ms. Lavigne's counsel at that time said that one was not necessary. Mr. Boal relied on a log note of a conversation with Ms. Lavigne's alleged "boss" that was not in fact her boss, but there was no way for Mr. Boal to know that at the time.

[3] Mr. Steeves, being the review officer of WCAT, was not guilty of any misconduct or perversity in the review proceedings before him either, as his only function was to review the record as it stood before him and to consider any new evidence applications before him. He did not find Mr. Boal's decision to be patently unreasonable and I reached that same conclusion in my reasons for decision of August 15, 2008.

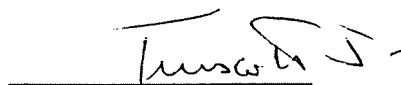
[4] In addition, there was no new evidence application made before Mr. Steeves on behalf of Ms. Lavigne.

[5] I have returned the matter to a WCAT review officer, whoever that might be, for reconsideration as to whether he or she is prepared to accept the letter of May 26, 2004 over the name of Mr. O'Dare as new evidence even though it was not presented as new evidence to Mr. Steeves, or accept it as evidence demonstrating that it was unfair as a matter of natural justice for Mr. Boal not to have conducted an oral hearing that would have required the "boss," Mr. O'Dare, to be present.

[6] Even if the review officer should conclude the reconsideration in favour of Ms. Lavigne, in my view it would not constitute misconduct or perversity in the proceedings that took place before Mr. Steeves, nor before Mr. Boal in the first place.

[7] Before me on the judicial review application counsel for WCAT did not argue the merits of the application in terms of whether Ms. Lavigne should have been considered a first aid attendant or not. He only argued that WCAT had the jurisdiction to make the decisions it did and Mr. Boal's decision was not patently unreasonable and Mr. Steeves' decision was correct in law.

[8] Therefore on the authority of **Lang**, I conclude that WCAT will not have to pay costs to Ms. Lavigne on the judicial review application. The other parties to Ms. Lavigne's judicial review application against whom the application was dismissed by my reasons are not seeking costs from Ms. Lavigne. Accordingly, my ruling is that each party, including Ms. Lavigne, will bear their own costs.



Truscott, J.