

***Brown Bros. Motor Lease Canada Ltd. v.
Workers' Compensation Appeal Tribunal***

Decision Summary

Court	B.C. Supreme Court
Citation	2021 BCSC 53
Result	Judicial Review Dismissed
Judge	Madam Justice Adair
Date of Judgment	January 14, 2021
WCAT Decision(s) Reviewed	A1603743

Keywords:

Judicial review – Section 311 determination – Whether a person is a “worker” under the Workers Compensation Act – Constitutional applicability of the Act – Approach to judicial review where question of constitutional applicability – Policy AP1-4-of the Assessment Manual of the Workers’ Compensation Board

Summary:

The flight crew of a U.S.-based airline were injured in a car accident while being driven from their hotel to the airport in Vancouver. The crew were on a layover, taking required rest between flights and were scheduled to fly from Vancouver to the United States. Each of the crew members was an American citizen. Each commenced litigation in British Columbia suing those they alleged to be responsible for the accident and their respective damages. The defendant driver was in the course of his employment when the accident happened and the defendants pleaded that the action was barred by section 10 of the *Workers Compensation Act* (now section 127). The plaintiffs applied to the Workers’ Compensation Appeal Tribunal (WCAT) under section 257 (now section 311) for a determination of whether their injuries arose out of and in the course of their employment. WCAT determined that, through application of policy item AP1-2-1 (now policy AP1-4-1), the *Act* did not apply to the plaintiffs because they had no attachment to British Columbia industry.

On their application for judicial review, the defendants argued that WCAT did not correctly apply the test for constitutional applicability of the *Workers Compensation Act* to the plaintiffs’ circumstances. Specifically, they argued that WCAT answered the constitutional question only with reference to policy item AP1-2-1, which cannot be used as a test for the constitutional applicability of the *Act*. The plaintiffs argued that constitutional applicability is a two-step process. The first step required WCAT to

determine whether the plaintiffs were “workers” for the purposes of the *Act*. This is a statutory interpretation question, which is reviewed by the court on a standard of patent unreasonableness. The second step is to determine whether the plaintiffs were sufficiently connected to B.C. such that provincial legislation should apply to them. This is a constitutional question, which WCAT must determine correctly (*i.e.*, on review, the court owes no deference to WCAT).

The court found that WCAT had resolved the appeal by answering in the negative the question of whether the plaintiffs were workers to whom the *Act* applied. As this was a question of statutory interpretation, with reference to policy item AP1-2-1, the WCAT decision could only be disturbed if the tribunal made a patently unreasonable finding. The court concluded that WCAT’s finding was not patently unreasonable. Policy AP1-2-1 notes that when the flight crew of an airline from outside B.C. are on a “turn-around” flight, they may be excluded from coverage under the *Act*. The court held that it was not unreasonable for WCAT to find that the policy should have the same effect for flight crew on a “layover” rather than a “turn-around”.

The petition was dismissed.