

Ahluwalia v. Workers' Compensation Appeal Tribunal

Decision Summary

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| Court | B.C. Supreme Court |
| Citation | 2020 BCSC 1717 |
| Result | Petition dismissed |
| Judge | Mr. Justice Riley |
| Date of Judgment | October 30, 2020 |
| WCAT Decision(s) Reviewed | A2001088 |

Keywords:

Judicial review – Patent unreasonableness – Jurisdiction of Workers' Compensation Appeal Tribunal – Workers Compensation Act, sections 21 and 288 – Occupational health and safety orders not resulting in penalty not appealable to Workers' Compensation Appeal Tribunal

Judicial review – Patent unreasonableness – Administrative Tribunals Act, section 31(1)(a) – Summary dismissal – Application not within jurisdiction of tribunal

Judicial review – Procedural fairness – Administrative Tribunals Act, section 31(1)(a) – Summary dismissal – Summary dismissal procedure fair

Summary:

The Workers' Compensation Appeal Tribunal (WCAT) decided that it did not have jurisdiction to hear an appeal of a decision not to issue an order under the occupational health and safety provisions of the *Workers Compensation Act*. The worker sought to appeal to WCAT a decision of the Review Division of the Workers' Compensation Board (WorkSafeBC) finding that the worker's employer had complied with the occupational health and safety provisions of the *Act*. On judicial review of the WCAT decision, the court held that WCAT's interpretation of its jurisdiction was not patently unreasonable and that its procedure was fair. The court dismissed the petition for judicial review.

The worker had reported to her employer that she had been bullied and harassed at work. The employer conducted an investigation into the complaint. The worker was unsatisfied with the employer's investigation and took her complaint to WorkSafeBC. A WorkSafeBC occupational safety officer conducted an investigation into the matter and concluded that the employer's response and follow up to the bullying report were in compliance with requirements regarding occupational health and safety under Part 2 of the *Workers Compensation Act*. Subsequently, the Review Division agreed and

concluded that there was no basis for issuing an order against the employer under section 21(1) of the *Act*. The Review Division decision included a generic notice that most sorts of decisions by the Review Division are appealable to WCAT, with certain exceptions, including orders made under Part 2 of the *Act* that do not result in a penalty.

The appeal to WCAT was dismissed on a summary basis under the authority given to WCAT by section 31 of the *Administrative Tribunals Act*. This process involved WCAT first alerting the worker to the jurisdictional question. Section 288(2) of the *Workers Compensation Act* provides that there is no appeal to WCAT from a decision of a review officer respecting an order made under Part 2 of the *Act* (occupational health and safety), other than where the order results in a penalty. WCAT then invited the worker to make submissions on this jurisdictional question. Although the worker did make submissions, she did not address the jurisdictional question and WCAT dismissed the appeal.

The court held that the standard of review of WCAT's decision on the jurisdictional question should be whether the decision was patently unreasonable. The WCAT decision involved an interpretation of the *Workers Compensation Act* and therefore came under WCAT's exclusive jurisdiction. The court noted that since the Supreme Court of Canada's judgment in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, jurisdictional questions no longer attract the standard of correctness on judicial review. The court held that WCAT's interpretation of the *Act* was not patently unreasonable.

The worker argued that the generic notice on the Review Division decision led her to believe that she had a right to appeal to WCAT and it would be unfair for WCAT to decide otherwise. The court found that the notice, read objectively, did not (and could not) confer a right to appeal. Furthermore, WCAT's procedure was fair as it alerted the worker to the jurisdictional question and gave her an opportunity to make submissions on the point.