Dhillon v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Court of Appeal
Citation	2022 BCCA 251
Result	Appeal dismissed
Judges	Madam Justice Newbury; Mr. Justice Frankel; Mr. Justice Fitch
Date of Judgment	July 19, 2022
WCAT Decision Reviewed	WCAT Decision No. A1901124 (September 25, 2019)

Keywords

Judicial review – Standard of review – Patent Unreasonableness – Section 257 [now 311] of the Workers Compensation Act – Policy items # C3-14.00, # C3-19.00 of the Rehabilitation Services and Claims Manual Vol. II – Traveling employees – Arising out of and in the course of employment

Background and reasons of the B.C. Supreme Court

The Workers' Compensation Appeal Tribunal (WCAT) decision numbered A1901124, issued September 25, 2019 (the "WCAT Decision"), was a determination made pursuant to section 257 of the *Workers Compensation Act* [RSBC 1996], c. 492 (now section 311 of the *Workers Compensation Act* [RSBC 2019], c. 1).

Ms. Dhillon and Mr. Shaheem were involved in a motor vehicle accident. Ms. Dhillon commenced an action against Mr. Shaheem for injuries sustained in that accident. Mr. Shaheem sought a determination from WCAT that both he and Ms. Dhillon were engaged in the scope of their employment at the time of the accident.

The WCAT panel found that Ms. Dhillon was a care aide that provided assistance to clients in their homes. The motor vehicle accident occurred when she was driving home, after leaving her last client of the day.

The panel found that at the time of the accident, Ms. Dhillon was a worker. Ms. Dhillon was a travelling employee. The panel considered policy #C3-14.00, "Arising Out of and In the Course of a Worker's Employment", and policy #C3-19.00 "Work Related Travel". The panel found that pursuant to policy #C3-19.00 and previous WCAT decisions, travelling employees are generally within the course of their employment from the time

they leave home in the morning until they return home at the end of the workday, subject to a major deviation for personal reasons. The panel concluded that Ms. Dhillon was in the course of her employment at the time of the accident while driving from the home of her last client to her home. Thus, any injury suffered by her arose out of and in the course of her employment.

Mr. Shaheem was a tow truck driver. The panel accepted that at the time of the accident, Mr. Shaheem was a worker. He was also a travelling employee. The panel accepted that, prior to the accident, Mr. Shaheem had towed a vehicle from one body shop owned by his employer to another, and was heading home when the accident occurred. The panel concluded that Mr. Shaheem was in the course of his employment when the accident occurred. Thus, any action or conduct of Mr. Shaheem, which caused the alleged breach of duty of care, arose out of and in the course of his employment.

The B.C. Supreme Court found that the WCAT Decision was not patently unreasonable. WCAT's interpretation of policy C3-19.00, as providing door-to-door coverage for travelling employees, was not patently unreasonable. In referring to previous WCAT decisions, the panel identified that the reasoning in those decisions was consistent with its own, and thus it agreed with those decisions. The panel did not simply adopt the reasoning from these previous decisions and thereby fail to exercise its own decision making authority.

There was some evidence to support the panel's conclusion that Mr. Shaheem was driving home from work at the time of the accident. The fact that there was no documentary evidence corroborating Mr. Shaheem's evidence in discovery that he was driving home from a tow job was not determinative. Statutory decision makers, including WCAT, are entitled to draw inferences from the evidence before them. In this case, WCAT did just that. That inference was not patently unreasonable.

The court dismissed the petition.

Reasons of the BC Court of Appeal

With respect to the work status of Ms. Dhillon, the Court of Appeal found that WCAT had carried out a reasoned consideration of policies #C3-14.00 and #C3-19.00. WCAT found that the specific provisions of policy #C3-19.00 concerning traveling employees were found to support a "more general provision of coverage for a traveling employee throughout their work day (in the absence of a major deviation for personal reasons)." The Court found that it could not be said that WCAT's conclusions were irrational or could not be supported on the evidence.

With respect to the work status of Mr. Shaheem, WCAT accepted Mr. Shaheem's evidence that he had towed a vehicle from one body shop owned by his employer to another, and was heading home when the accident occurred. Ms. Dhillon argued that viewed reasonably, the evidence was incapable of supporting the conclusion that Mr.

Shaheem had been in the course of his employment when the accident occurred. Ms. Dhillon argued that WCAT had accepted Mr. Shaheem's evidence as credible, in the absence of any documentary or other corroborative evidence that he was coming home from a towing job. Further, the evidence was that Mr. Shaheem had engaged in suspicious conduct immediately after the accident.

The court found that it was not open to it to reweigh the evidence that had been before the tribunal. There was some evidence to support WCAT's conclusion regarding Mr. Shaheem. It was for WCAT to weigh the evidence before it and draw the inferences it thought appropriate. WCAT's conclusion that Mr. Shaheem was acting in the course of his duties was not irrational, nor was it "openly, clearly, evidently unreasonable."

The court dismissed the appeal, with the result that the WCAT Decision is upheld.