

Campbell v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	BC Supreme Court
Citation	2022 BCSC 862
Result	Petition dismissed
Judge	Kent
Date of Judgement	26 May 2022
WCAT Decision Reviewed	A1606676

Keywords:

Judicial review - section 311 certification to court - standard of review - analyzing reasons - alternative findings - submission on application inconsistent with submission on judicial review - procedural error not resulting in unfairness

A logging company employee was on his way home when his pick-up truck collided with a logging truck. He suffered severe injuries and was left with no memory of the day of the accident. He commenced a lawsuit against the driver and the owner of the logging truck, along with the road maintenance company. The Defendants raised section 10 of the *Workers Compensation Act* [now section 127] as a bar to the Plaintiff's claim. The road maintenance company applied to WCAT for determinations under section 257 [now 311] that the Plaintiff was a worker within the meaning of the Act, and that his injuries arose out of and in the course of his employment. The company also sought a determination concerning their status as an employer. The other Defendants made submissions these issues and also their own statuses under the Act. The Plaintiff made submissions concerning his status and whether the injuries out of and in the course of his employment. Among other things, he argued that there was circumstantial and medical evidence to show that prior to the accident he had consumed cannabis and alcohol, and that this indicated that his injuries did not arise out of and in the course of his employment. The Plaintiff did not comment on the statuses of the Defendants.

The WCAT Panel determined that all parties were either workers or employers under the Act, and that the injuries arose out of and in the course of his employment.

On judicial review, the Plaintiff asserted that the Panel should not have made determined the status of the logging truck driver and of the owner because they had not filed a separate application in the prescribed form, and because Plaintiff's counsel was effectively denied the opportunity to respond on these issues. However, the Court noted that the version of WCAT's Manual of Rules of Practice and Procedure ("MRPP") in effect at the time did not require use of

the application form [it does now], and held that while Plaintiff's counsel had not received formal notice, they had sufficient notice and opportunity to make submissions on these issues.

The Plaintiff also argued that some of the Panel's findings of fact were illogical and irrational. However, the Court held that the Panel's findings should be treated with great deference, and also noted that the Panel's decision included alternative findings which the Plaintiff did not challenge on review, and which rendered the alleged errors moot. The Panel's decision must be treated as an organic whole, not parsed and dissected in a search for error.

The Panel's decision made reference to a white paper on cannabis, which she had discovered through her own research, but had not disclosed to the parties. In particular, the paper noted that a positive test for cannabis does not necessarily indicate impairment. While section 246 of the Act [now 297] permits a panel undertake such research, the parties should be given the opportunity to make submissions on it. Nevertheless, the Court noted that held that there had been no unfairness to the Plaintiff since his submissions to WCAT had asserted that he was not impaired at the time of the accident.

The Plaintiff challenged the adequacy of the Panel's reasons concerning the status of the road maintenance company and its employees. However, the Court noted that the Plaintiff's submission to WCAT had not addressed this issue, and that his Notice of Claim on the tort action included allegations that the company and its employees had contributed to the accident.