BRITISH COLUMBIA **WCAT** ***Workers' Compensation Appeal Tribunal***

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WCAT Decision Number: **WCAT-2007-03415**
WCAT Decision Date: **October 31, 2007**

Panel: Herb Morton, Vice Chair

WCAT Reference Number: 061285-A

Section 257 Determination
In the Supreme Court of British Columbia
New Westminster Registry No. M91526
Ralph Vermeulen-Miller v. Ralph Vern Sanders and Sea-Fresh Reefer Transport Ltd.

Applicants: Ralph Vern Sanders and Sea-Fresh Reefer Transport Ltd.
(the "defendants")

Respondent: Ralph Vermeulen-Miller
(the "plaintiff")

Representatives:

For Applicants: Lina Giustra
HARRIS & BRUN

For Respondent: Vahan A. Ishkanian
Barrister & Solicitor

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Introduction

The plaintiff was involved in a motor vehicle accident on June 29, 2004, at approximately 6:30 a.m. At the time of the accident, the plaintiff was driving east on Highway #1 near Abbotsford. The defendant, Ralph Vern Sanders (Sanders), was driving a loaded tractor trailer. Due to construction work, traffic came to a halt and the defendant was unable to stop, resulting in a multi-vehicle accident.

Pursuant to section 257 of the *Workers Compensation Act* (Act), the Workers' Compensation Appeal Tribunal (WCAT) may be asked by a party or the court to make determinations and certify to the court concerning actions based on a disability caused by occupational disease, a personal injury or death. This application was initiated by counsel for the defendants on April 24, 2006. Transcripts have been provided of the examinations for discovery of the plaintiff on December 13, 2005 and September 21, 2006, of the defendant, Sanders, on December 13, 2005 and April 3, 2007, and of Mark Adrian Bader (president of Sea-Fresh Reefer Transport Ltd. (Sea-Fresh)) on April 3, 2007. The trial date has been adjourned. Written submissions have been provided by the parties to the legal action. Affidavits have been provided by Sanders (May 7, 2007), and by insurance adjusters, Jeanie Fraser (May 15, 2007) and Tobin Dirk (May 29, 2007). Riverside Bridge & Pile Ltd. (Riverside) and RVM Management Ltd. (RVM) were invited to participate in this application as interested persons, but did not respond.

In surrebuttal dated October 22, 2007, counsel for the plaintiff indicates that it has become necessary to cross examine the evidence of personnel of the Insurance Corporation of British Columbia (ICBC) unless little or no weight is placed on their evidence. He further requests subpoenas of all of ICBC's records and for the attendance of all ICBC personnel who became involved in this matter. In support of this request, he cites the decision of the British Columbia Supreme Court in *Baker v. WCAT et al*., 2007 BCSC 1517. By letter dated October 23, 2007, counsel for the

defendants forwarded copies of several ICBC records which had previously been provided to plaintiff's counsel.

For reasons set out further below, I consider that the questions regarding the ICBC records are peripheral to this application and are not of sufficient relevance to warrant further inquiry by way of an oral hearing or the issuance of subpoenas. I find that the issues raised in this application are ones which may properly be considered on the basis of the written evidence and submissions without an oral hearing.

In this decision, Board means the Workers' Compensation Board, now operating as WorkSafeBC.

Issue(s)

The contested issues concern the status of the plaintiff, as to whether he was a worker within the meaning of Part 1 of the Act, and if so, whether his injuries on June 29, 2004 arose out of and in the course of his employment. Determinations are also requested concerning the status of the defendants.

Jurisdiction

Part 4 of the Act applies to proceedings under section 257, except that no time frame applies to the making of the WCAT decision (section 257(3)). WCAT is not bound by legal precedent (section 250(1)). WCAT must make its decision based on the merits and justice of the case, but in so doing must apply a published policy of the board of directors of the Board that is applicable (section 250(2)). Section 254(c) provides that WCAT has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined under Part 4 of the Act, including all matters that WCAT is requested to determine under section 257. The WCAT decision is final and conclusive and is not open to question or review in any court (section 255(1)). The court determines the effect of the certificate on the legal action.

Status of the Plaintiff

(a) Was the plaintiff a worker?

Following the accident on June 29, 2004, the plaintiff provided a signed statement to ICBC on July 30, 2004. He described himself as being "self-employed," as a 50% shareholder of RVM. He advised that his wife was the other 50% shareholder, and this was a holding company. The plaintiff further advised that he owned 75% of Riverside, which he described as an operating company which designs and builds "mostly forestry bridges." An ex-employee named Graham Monks owned the other 25% of Riverside.

The plaintiff gave evidence under oath at an examination for discovery. At questions 435 to 436, he explained that a good portion of the heavy equipment used in transporting and installing forestry bridges was owned by RVM, the holding company, and that RVM leased the equipment to Riverside as required. The plaintiff advised that this arrangement was for tax purposes (Q 1000). He advised that 99% of RVM's revenue came from Riverside (Q 1342). RVM also bought prefabricated bridges during the winter months, for resale to Riverside (which would then market the bridges for sale) (Q 1338). The plaintiff also had an office in Campbell River. He owned this personally, and leased it to RVM, which in turn leased it to Riverside (Q 874 to 879).

The plaintiff had a yard in Campbell River, where the heavy equipment was stored when it was not in use. The plaintiff advised that equipment stored at the Campbell River yard included a tractor trailer, eight or nine high boy trailers for transporting bridge components, a low bed trailer, a 25 ton excavator on tracks, two cranes, a specialized loader, a number of pickups, a dump truck, compressors, and various small tools (Q 422 to 434).

The plaintiff advised that Riverside was registered with the Board, but RVM was not (Q 533 to 534). By memorandum dated May 14, 2007, the policy manager, Assessment Department, confirmed that Riverside was registered with the Board under account 588364 at the time of the accident, and that there was no record of a registration for RVM.

Archived copies of the *Assessment Manual* are accessible on the Board's website. At the time of the accident on June 29, 2004, policy at AP1-1-4 provided:

> **(c) Principals of corporations or similar entities**
>
> **As the incorporated entity is considered the employer, a director, shareholder or other principal of the company who is active in the operation of the company is generally considered to be a worker under the *Act***. A spouse, child or other family member of a principal or a shareholder for whom earnings are reported for income tax purposes is considered to be active in the business and a worker.
>
> [emphasis added]

Notwithstanding the fact that the plaintiff owned half the shares of Riverside, he is, for workers' compensation purposes, considered to be a worker of Riverside pursuant to this policy. I find that the plaintiff was, in respect of his activities on behalf of Riverside, a worker within the meaning of Part 1 of the Act.

It is also necessary to consider the plaintiff's status in relation to RVM. It appears that the plaintiff considered that this company was not required to register with the Board, on the basis that it was only a "holding company" and that the active working operations

were conducted through Riverside. However, this understanding does not accord with the applicable law and policy.

Section 2(1) of the Act provides:

> This Part applies to all employers, as employers, and all workers in British Columbia except employers or workers exempted by order of the Board.

The initial policy decision by the former board of governors concerning the use of its exemption authority under section 2(1) of the Act was contained in *Decision of the Governors Number 60*, "Exemption from Coverage Under Part One of the *Workers Compensation Act,*" 10 W.C.R. 167. One of the general principles set out in that decision was that section 2(1) creates a scheme of universal coverage, with exemptions being granted for exceptional industries or occupations whose circumstances did not fit the purpose and intent of the Act. *Decision No. 60* contained no provision for exemption of holding companies. In a later decision of the panel of administrators dated May 15, 1996, approval was granted for the exemption of personal financial holding companies (13 W.C.R. 509).

AP1-2-1(5) of the *Assessment Manual* contains the relevant policy of the board of directors under their exemption authority pursuant to section 2(1) of the Act:

> (5) **A personal financial holding company that complies with all of the following is exempt**:
>
> (i) it is incorporated;
>
> (ii) the only workers are the shareholders of the company;
>
> (iii) no activities are carried out by the company except the management of the shareholders' own personal financial investments; which consist solely of:
>
> - investments in publicly traded stocks and bonds, mutual funds, or limited partnerships where the company has no say in day-today management of the partnership;
>
> - interest bearing financial instruments such as GICs, savings bonds, treasury bills or certificates for deposit; or
>
> - **non-revenue producing land, buildings, or equipment where there is no development, construction, or direct rental activity**; and

(iv) the company invests only its own assets and the assets of its shareholders.

[emphasis added]

The policy is clear in stipulating that all of the requirements of AP1-2-1(5) must be met, in order for a personal financial holding company to be exempted from the application of Part 1 of the Act. The personal financial investments must consist solely of non-revenue producing land and buildings where there is no development, construction, or direct rental activity. In this case, RVM was actively involved in renting a variety of pieces of heavy equipment. In addition, RVM bought and sold pre-fabricated bridges. I find that RVM was required to register with the Board as an employer, as it did not qualify to be exempted from such registration based on the policy at AP1-2-1(5).

Accordingly, on the basis of the reasons set out above in relation to Riverside, the plaintiff would normally be considered to be a worker of RVM, in respect of any activities on behalf of RVM. However, it is necessary to consider the significance of RVM's lack of registration with the Board.

Policy at AP1-1-4 provided:

> **If a sole, active principal of a limited company is injured at a time when the company was not registered as an employer with the Board, the principal will not be considered a worker at that time and a claim by the principal or his or her dependents will be denied. For the same reason, a claim from one of several principals of a company that was unregistered at the time of the injury, or in the case of fatality, his or her dependents, will be denied unless the evidence indicates that the principal was not personally responsible for the failure to register**. The term "principal" covers persons who would be proprietors or partners in the business if the business were not incorporated.
>
> In determining whether a principal was personally responsible for a failure to register, the factors considered include whether the principal was:
>
> - a minority or majority shareholder;
> - a director of the company;
> - carrying out management functions or simply doing work that an employee would normally do; and
> - responsible for doing other functions equivalent to those associated with the Board, such as dealing with income tax or employment insurance.

In this case, the plaintiff's evidence was that he made all of the decisions for RVM and for Riverside, even though his wife was listed as the director and president of RVM (Q 1625 to 1630). He explained: "I mean, I discuss them with my wife and we come to an agreement, but ultimately I'm the businessman." The plaintiff further described his wife's role in the business as follows (Q 996):

> Some bookkeeping. More or less she was paid just for income splitting purposes.

I find that the plaintiff had responsibility for RVM's failure to register with the Board. Accordingly, based on the policy cited above, I find that the plaintiff was acting as though he were an independent operator in carrying out activities on behalf of RVM. I find that in relation to these activities of behalf of RVM, the plaintiff was not a worker within the meaning of Part 1 of the Act.

Accordingly, in considering whether the plaintiff's accident on June 29, 2004 arose out of and in the course of his employment, it is necessary to determine whether his actions at the time of the accident were on behalf of Riverside (so as to be work-related). Alternatively, were they not work-related, as being on behalf of RVM or as being personal in nature?

(b) Arising out of and in the course of the employment

Counsel for the defendants has provided submissions regarding the application of the policies at items #14.00 and #18.00 (and following) of the *Rehabilitation Services and Claims Manual*, *Volume II* (RSCM II). I agree that those policies are the ones to be applied in this case, and have taken them into account in reaching the determination set out below.

At the time of the June 29, 2004 accident, the plaintiff was driving east on Highway #1 near Abbotsford. He was driving a 1999 Ford F450 flatdeck truck, which was owned by Riverside (Q 772). It was insured and used for work purposes (Q 775). It was insured under "artisan use", which includes pleasure use (Q 776). Riverside paid 100% of the operating costs of this vehicle (Q 778 to 779).

The plaintiff has provided evidence regarding two destinations which he had on June 29, 2004. The first leg of his journey involved travelling a short distance to the lot on which he intended to build a new home for his family (where he also intended to drop off a 400 gallon "tidy tank" filled with diesel fuel). The second leg of his journey involved travelling a greater distance to Chilliwack, for the purpose of picking up an airplane engine. This second leg of his journey required that he return to Highway #1, and to continue driving east on Highway #1 for approximately 35 kilometres from Abbotsford to Chilliwack (Q 1195).

There are two ways of looking at the plaintiff's status at the time of the accident. One is that he was in the course of his journey to the building lot. The second is that he was, at the time of the accident, heading east on Highway #1 towards his ultimate destination in Chilliwack (to pick up the aircraft engine), and had not yet commenced a detour from that route for the purpose of going to the building lot. For the purposes of my decision, I consider it appropriate to consider the plaintiff's status in connection with these two different destinations, before addressing the question concerning his status at the time of the accident.

Given that the plaintiff could use the Ford F450 flatdeck truck for work or pleasure, I do not consider that the fact that Riverside owned the truck and paid for all its operating costs is determinative of the plaintiff's status at the time of the accident. If the truck was in fact being used by the plaintiff for primarily personal purposes, I do not consider that his activities at the time of the accident may be found to be work-related simply because he was using Riverside's vehicle. This evidence is simply one factor to be considered.

(i) travel to the building lot

By affidavit sworn on May 15, 2007, Jeanie Fraser, insurance adjuster, advises that she received a telephone call from the plaintiff on July 2, 2004 to report the June 29, 2004 accident. She advises that the information provided by the plaintiff included the following:

> n. he was on his way to his excavator and then to a jobsite at the time of the Accident.

In a further affidavit sworn on May 29, 2007, Tobin Dirk, insurance adjuster, advised that he had several conversations with the plaintiff leading up to taking a written statement from him on July 30, 2004. Dirk advises:

> 3. I had a telephone conversation with the plaintiff on July 6, 2004. At that time, he stated that he was not working at the time of the Accident. He confirmed that he was the president of Riverside… and was dropping off equipment at his farm where he had room to store it….

Dirk further advised that in subsequent conversations, the plaintiff stated:

> h. he had airplane parts on the truck that he was driving at the time of the Accident;
>
> i. his business duties included driving an excavator;

In his initial written statement to ICBC dated July 30, 2004, the plaintiff advised:

> On June 29, 2004 I was on my way from home to property I own on Wells Line and Cole Road. There is no home, just land. I had filled the tidy tank the day before and I was dropping it off at the property. I was not working for Riverside on the day of the accident.… At the time of the accident Iwas [*sic*] not working. My main duties with my business are bidding, design work, coordinate everything, drive truck and the excavator, do billing. I basically do everything.
>
> [capitalization removed]

The accident occurred at approximately 6:30 a.m. (Q 56). The plaintiff was coming from his residence on Highfield Crescent in Abbotsford (Q 57 to 58). He was going to the property on Wells Line Road. He stated (Q 60):

> I was dropping off a tidy tank and I was going to do some measuring on the – we had planned on building a house there.
>
> [reproduced as written]

He further explained (Q 1178):

> There was a number of things I was going to do that day. One was, we had bought the property and I was in the process of surveying the house footing in – like to get a building permit. You have to tell them where you're putting the building. So I was going to dormer the building, peg it. They call it peg it, so that the footprint of the house relating to the property and the property lines are visible. So that was the one task I was going to do and then I was going to take off the tidy tank and pick up the aircraft engine later that day.

The plaintiff explained that he wanted to remove the fuel tank from the truck, as he was going to pick up an airplane engine (Q 64 to 65). The tank was filled with diesel fuel (Q 69 to 71). The plaintiff explained that he was dropping off the tidy tank to make room for the airplane engine (Q 538 to 540). He also explained that he did not want to drive to Chilliwack with 400 litres of fuel on the back of the truck. (Q 1183 to 1185)

The Wells Line Road property was owned by the plaintiff and his wife personally (Q 75 to 76). The plaintiff had an excavator on the Wells Line Road property (Q 73). He had moved the excavator from the Campbell River yard to this property prior to the accident, for the purposes of excavating the site (Q 485 to 486). Subsequent to the accident, the plaintiff "ran the excavator to do the excavation." (Q 483)

The plaintiff advised that the property was ten acres in size, and was "going to be a farm." (Q 1185 to 1186).

The distance to the turnoff from Highway #1 to go to this property was approximately two and a half miles (Q 1190), but the accident occurred before the plaintiff reached this turnoff. The accident occurred approximately five or ten minutes after he left his house (Q 1202).

Plaintiff's counsel has furnished a copy of the Inspection Card Report for the Wells Line Road property. This bears an application date of September 2, 2004, two months after the June 29, 2004 accident. He has also provided a copy of the June 7, 2004 state of title certificate for this property, showing an application for registration on April 7, 2004. Plaintiff's counsel submits:

> …it is important to note that the excavator was owned by RVM, and only used by Riverside Bridge & Pile on a job-by-job basis in the sense that Riverside would rent the excavator for a specific job only. The excavator was not on Mr. Miller's personal property for any company related work; it was there only so he could dig the foundations for his property, and so had no connection to any employment.

The plaintiff's evidence at questions 772 to 773 was that the bulk of the equipment was owned by RVM, apart from the pick-up, the flat-bed truck and a few of the trailers. I accept that the excavator was owned by RVM. For the reasons set out above, any activities of the plaintiff on behalf of RVM, in respect of this excavator, were not employment-related.

Counsel for the defendants submits that the plaintiff would presumably have had a new home office for his companies in his new house on Wells Line Road. I consider, however, that the plaintiff's construction of his new residence for his family must be viewed as being primarily personal in nature. Assuming that the plaintiff would in fact have utilized part of the house for a home office for Riverside, I do not consider that this would suffice to bring his activities relating to the construction of the house in general within the scope of his employment.

As the plaintiff's attendance at the lot related to his construction of a personal residence, I find that his activities in relation to that lot were primarily personal in nature.

I have noted the plaintiff's evidence that all of the bills relating to the construction of the house were paid through RVM as a shareholder's loan (Q 1653). However, even if this was construed as involving RVM in this construction, this would not be an employment-related activity, given my conclusion above regarding the effect of RVM's failure to register with the Board. Accordingly, I need not further address the submissions provided concerning these shareholder's loans.

(ii) travel to Chilliwack to pick up the airplane engine

The plaintiff owned an airplane, in his personal name (Q 546). This was a 1974 Cessna 185 (Q 662). He bought this plane in 1996 (Q 665), and had always held it in his personal name (Q 666). The plane was used for both pleasure and business purposes (Q 667). He used it to travel to Campbell River for work. He also used it to fly to various lake to go fishing (Q 711). The Cessna 185 was insured in the plaintiff's personal name (Q 1005). Plaintiff's counsel has furnished a copy of the Transport Canada Certificate of Registration of Aircraft of the Cessna A185F showing a registration date of April 3, 1997, in the plaintiff's personal name.

For a period of time, the plaintiff rented the plane to Riverside, but ceased doing so by 2000 (Q 671). He explained that he did not show depreciation on the plane as a business expense, but did charge the cost of maintenance and fuel to Riverside. Riverside would pay those bills directly. (Q 673 to 681)

The Cessna 185 was damaged in a "hard landing" in 2001 or 2002, following which it remained "grounded" (Q 694 to 695). Maintenance work on the aircraft was done by Firkus Aircraft [Servicing Ltd.], in Chilliwack (Q 682 to 684). As part of fixing this plane, the plaintiff had some surplus parts (Q 696). The engine on the Cessna 185 was replaced. The plaintiff explained (Q 700 to 701):

> A And it's a surplus engine. It had time left on it, so I decided I would keep it and – keep it for spare parts.
>
> Q Okay, and were you keeping it at your home?
>
> A No, it was at Firkus. I was going to move it to the garage and then it's – it's pretty tough to leave an engine in an unheated area because it will corrode. So the best – the best spot for that engine to be would have been in my heated garage.

The plaintiff was planning to pick up the engine from Firkus in Chilliwack, to bring it back to his house in Abbotsford (Q 702 to 705). It would have taken the plaintiff approximately 30 minutes to drive from his home in Abbotsford to Firkus' location in Chilliwack (Q 1201).

A second aircraft, a Cessna 182, was owned by RVM (Q 656 to 659). This second plane had been sold prior to the June 2004 accident (Q 659 to 660).

The Cessna 185 was last insured in 2002. (Q 1011) Accordingly, the plaintiff had been traveling by car and ferry to get to Campbell River (Q 871 to 873).

In his examination for discovery, the plaintiff indicated he had some small airplane parts in the cab of his truck at the time of the accident (Q 1223 to 1234).

Plaintiff's counsel has furnished a letter dated June 22, 2007 by Ken Smith, Upper Valley Aviation, stating that he had known the plaintiff for twenty years "and have had numerous dealings with him regarding aircraft sales and parts sales. These dealings were always done on a private basis."

Counsel for the defendants has argued that since the airplane was used for business and the expenses of the airplane were written off as business expenses, then picking up the airplane engine was a chore that benefited Riverside. She submits that if the primary purpose of the trip on the day of the accident was to pick up the airplane engine, then the trip was work-related.

A statement dated June 5, 2007 has been provided by Graeme Monks, who was a business partner with the plaintiff from 1997 to 2001 and part owner of Riverside. He has provided evidence regarding the plaintiff's use of the airplane "[a]t the time of our business relationship." However, this time frame appears to have been prior to the hard landing of the plane in 2001 or 2002. Accordingly, this statement does not relate to the time frame in which the accident occurred (in June 2004).

In view of the fact that the plane was owned by the plaintiff personally, and had not been flown since being damaged in a hard landing in 2001 or 2002, I do not consider that that the plaintiff's travel to pick up the aircraft engine (to be stored for parts) was work-related. I consider that this travel in June 2004 was primarily related to the plaintiff's personal ownership of the Cessna 185. While the evidence on this issue is somewhat mixed, given the plaintiff's mingling of his various personal and business endeavours (including the charging of maintenance work to Riverside), I consider that the plaintiff's personal ownership of the airplane, and its unavailability for use for business purposes due to damage suffered in a "hard landing," are key factors in this decision.

Accordingly, I find that the plaintiff's activities associated with the aircraft engine and parts, and travel to Firkus' location in Chilliwack, were personal in nature rather than being work-related.

(iii) Conclusion on this issue

In view of my conclusions under (i) and (ii), it is not necessary that I determine whether the plaintiff's travel at the time of the accident was travel to the building lot, or travel to Chilliwack. In either case, such travel did not arise out of and in the course of the plaintiff's employment by Riverside.

In reaching this conclusion, I have noted the affidavits by the insurance adjusters concerning whether the plaintiff described himself as working at the date of the accident, and whether he make reference to the excavator and a job site. The characterization by the plaintiff as to whether he was working on the day of the accident has only limited evidentiary value by itself. WCAT must examine the underlying evidence so as to make its own determination of such an issue. As well, the determination of such an issue involves questions of law and policy, rather than being simply a matter of fact. I prefer, in any event, the more detailed sworn evidence which has been provided by the plaintiff concerning the meaning of his references to the excavator and a job site (notwithstanding the concern which arises regarding the plaintiff's credibility, in respect of his description of undeclared earnings from cash jobs (Q 520 to 521). No additional evidence has been provided to support the possibility that the plaintiff was going to get the excavator for use at some other work site, as part of his employment by Riverside. It does not appear that the building site on Wells Line Road was ready for excavation on June 29, 2004. Alternatively, even if it was, the evidence does not support a conclusion that such excavation work would have arisen out of and in the course of the plaintiff's employment for Riverside. Without additional evidence to support the possibility that the plaintiff was intending to do excavation work on the day of the accident, I consider that the evidence regarding this possibility must be viewed as either mistaken or speculative in nature.

Counsel have cited a number of WCAT and Appeal Division decisions. I accept these decisions may provide useful guidance in addressing questions regarding the scope of a worker's employment and have included those decisions in my consideration. However, my decision largely turns on the facts of this case. In view of my conclusions set out above, I do not find it necessary to provide further reasons regarding the effect of those decisions, or regarding the application of the policies at RSCM II items #14.00 and #18.00 and following.

Accordingly, I find that at the time of the accident on June 29, 2004, the plaintiff was a worker within the meaning of Part 1 of the Act, but his injuries in the accident did not arise out of and in the course of his employment.

Status of the Defendants

The status of the defendants is not in dispute. The defendant, Sanders, was employed as a truck driver for Sea-Fresh. Sea-Fresh was registered as an employer with the Board. At the time of the accident, Sanders was driving a fully loaded tractor trailer. In his July 13, 2004 statement to ICBC, Sanders stated that he averaged 56 hours of work per week. He had picked up his truck from the company yard near the Boundary Bay Airport, on the morning of the accident. He was driving a load of beer to Calgary.

Sanders submitted an application for workers' compensation benefits for injuries he sustained in the June 29, 2004 accident. His claim was accepted by the Board.

Sanders has provided an affidavit, sworn on May 7, 2007. Sea-Fresh was his only employer. Sea-Fresh made deductions from his paycheque for income taxes, Canada Pension Plan and Employment Insurance premiums. Prior to the accident, he had travelled from Calgary to Delta to deliver a load of frozen pork for Sea-Fresh. At the time of the accident, Sanders was driving a 1999 International tractor owned by Sea-Fresh. He dropped off the load of pork at the Sea-Fresh yard located near the Boundary Bay Airport in Delta, and picked up a load of beer to be delivered to Calgary.

In his examination for discovery, Sanders advised that he had worked for Sea-Fresh for about seven years (Q 20).

I find that the defendant, Sea-Fresh, was an employer engaged in an industry within the meaning of Part 1 of the Act. I further find that the defendant, Sanders, was a worker within the meaning of Part 1 of the Act, and that his action or conduct, which caused the alleged breach of duty of care, arose out of and in the course of his employment within the scope of Part 1 of the Act.

Conclusion

I find that at the time of the June 29, 2004 motor vehicle accident:

(a) the plaintiff, Ralph Vermeulen-Miller, was a worker within the meaning of Part 1 of the Act;

(b) the injuries suffered by the plaintiff, Ralph Vermeulen-Miller, did not arise out of and in the course of his employment within the scope of Part 1 of the Act;

(c) the defendant, Sea-Fresh Reefer Transport Ltd., was an employer engaged in an industry within the meaning of Part 1 of the Act;

(d) the defendant, Ralph Vern Sanders, was a worker within the meaning of Part 1 of the Act; and,

(e) any action or conduct of the defendant, Ralph Vern Sanders, which caused the alleged breach of duty of care, arose out of and in the course of his employment within the scope of Part 1 of the Act.

Herb Morton
Vice Chair

HM:gw

NO. M91526
NEW WESTMINSTER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

RALPH VERMEULEN-MILLER

PLAINTIFF

AND:

RALPH VERN SANDERS and SEA-FRESH REEFER TRANSPORT LTD.

DEFENDANTS

C E R T I F I C A T E

UPON APPLICATION of the Defendants, RALPH VERN SANDERS and SEA-FRESH REEFER TRANSPORT LTD., in this action for a determination pursuant to section 257 of the *Workers Compensation Act*;

AND UPON NOTICE having been given to the parties to this action and other interested persons of the matters relevant to this action and within the jurisdiction of the Workers' Compensation Appeal Tribunal;

AND AFTER an opportunity having been provided to all parties and other interested persons to submit evidence and argument;

AND UPON READING the pleadings in this action, and the submissions and material filed by the parties;

AND HAVING CONSIDERED the evidence and submissions;

THE WORKERS' COMPENSATION APPEAL TRIBUNAL DETERMINES THAT at the time the cause of the action arose, June 29, 2004:

1. The Plaintiff, RALPH VERMEULEN-MILLER, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. The injuries suffered by the Plaintiff, RALPH VERMEULEN-MILLER, did not arise out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act*.

3. The Defendant, SEA-FRESH REEFER TRANSPORT LTD., was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

4. The Defendant, RALPH VERN SANDERS, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

5. Any action or conduct of the Defendant, RALPH VERN SANDERS, which caused the alleged breach of duty of care, arose out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act.*

CERTIFIED this day of October, 2007.

_____

Herb Morton
VICE CHAIR

NO. M91526
NEW WESTMINSTER
REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

RALPH VERMEULEN-MILLER

PLAINTIFF

AND:

RALPH VERN SANDERS and SEA-FRESH REEFER TRANSPORT LTD.

DEFENDANTS

SECTION 257 CERTIFICATE

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