BRITISH COLUMBIA WCAT *Workers' Compensation Appeal Tribunal*

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WCAT Decision Number: **WCAT-2008-01799**
WCAT Decision Date: **June 18, 2008**

Panel: Herb Morton, Vice Chair

WCAT Reference Number: 070361-A

Section 257 Determination
In the Provincial Court of British Columbia
(Small Claims Court)
New Westminster Registry No. M0012660
Daljit Singh Bal v. Patrick Kendall Harrap

Applicant: Patrick Kendall Harrap
(the "defendant")

Respondent: Daljit Singh Bal
(the "claimant")

Representatives:

For Applicant: Marta M. Kumor
CASSADY & COMPANY

For Respondent: Dairn O. Shane
SIMPSON, THOMAS & ASSOCIATES

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Noteworthy Decision Summary

Decision: WCAT-2008-01799 **Panel:** Herb Morton **Decision Date:** June 18, 2008

Section 257 of the Workers Compensation Act – Travel from home office to work site – Policy item #18.32[1] of the Rehabilitation Services and Claims Manual, Volume II "Irregular Starting Point"

This decision is noteworthy as it provides an analysis of the status of persons who are involved in an accident when travelling between a home office and a work site.

On October 1, 2004 the claimant was involved in a motor vehicle accident while working as a courier. The claimant's vehicle was struck from behind by a vehicle being driven by the defendant. The defendant was an electrician who was driving to a job site. The defendant had a home office and was coming from his home at the time of the accident.

Pursuant to section 257 of the *Workers Compensation Act* (Act), 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 defendant. The issue in dispute concerns whether the action or conduct of the defendant, 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.

The panel found that the defendant was not a travelling employee, and therefore he would not normally be covered for workers' compensation purposes in respect of his travel between his home and the jobsite. The panel considered whether, however, workers' compensation coverage would apply to the defendant's travel from his home to the worksite, in light of the defendant's evidence that he had a home office and was doing some paperwork in his home office prior to leaving to travel to a job site. Such evidence could support a conclusion that the defendant's travel at the time of the accident involved travel between two working points. Policy item #18.32 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) *"Irregular Starting Point"* provides that coverage may apply where there is the termination of productive activity at one point followed by travel to commence productive activity at another point.

The panel considered the statement that the defendant had performed paperwork prior to leaving the house, which was provided without additional particulars as to the duration of this activity, or the nature of this activity. The panel found that clearer or more substantial evidence was required to establish that the defendant's home office had become a "working point," before the defendant's travel to a jobsite would be covered for workers' compensation purposes as contemplated by item #18.32 of the RSCM II. Accordingly, the panel concluded that any action or conduct of the defendant, which caused the alleged breach of duty of care, did not arise out of and in the course of his employment within the scope of Part 1 of the Act.

[1] Policy item #18.32 was consolidated into policy item #C3-19.00, effective July 1, 2010.

RE: Section 257 Determination
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Daljit Singh Bal v. Patrick Kendall Harrap

Introduction

The claimant, Daljit Singh Bal, was involved in a motor vehicle accident while working as a courier. The accident occurred at approximately 7:20 a.m. on October 1, 2004, at the intersection of McBride Boulevard and Columbia Street in New Westminster, B.C. The claimant's vehicle was struck from behind by a vehicle being driven by the defendant, Patrick Kendall Harrap. The defendant was an electrician who was driving to a job site. The defendant had a home office and was coming from his home at the time of the 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 defendant on February 1, 2007. The legal action is scheduled for trial on July 18, 2008. Written submissions have been provided by the parties to the legal action.

An oral hearing has not been requested. I find that this application involves questions of mixed fact and policy and can be properly considered on the basis of the written evidence and submissions, without an oral hearing.

Issue(s)

Determinations are requested concerning the status of the parties to the legal action. The issue in dispute concerns whether the action or conduct of the defendant, 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.

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 Workers' Compensation Board, operating as WorkSafeBC (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 Claimant, Daljit Singh Bal

The claimant provided a signed statement to the Insurance Corporation of British Columbia (ICBC) on October 6, 2004. He advised that he worked as a courier for K & H Dispatch. He further advised that the accident happened while he was making a delivery.

The claimant filed a provisional application for workers' compensation benefits. He completed an independent operator's application, stating that he was self-employed. He advised that the accident occurred at 7:20 a.m. on October 1, 2004, and that his actions at the time of the injury were for the purpose of his business, and were part of his regular work (questions #8 and #9).

By letter of March 16, 2005, an entitlement officer of the Board advised the claimant that his file would be suspended pending a request from him to reactivate his claim. (The making of a provisional application for workers' compensation benefits does not affect the determination of status in a section 257 application, but serves to protect the rights of a claimant/plaintiff, in respect of the one-year limitation period in section 55 of the Act, to subsequently pursue such an application should this be necessary.)

By memorandum dated November 6, 2007, the policy manager, Assessment Department, advised that Daljit Singh Bal, K & H Dispatch Driver #50-4, account 712820, was registered with the Board at the time of the October 1, 2004 accident. Coverage was for Personal Optional Protection.

By submission of March 25, 2008, counsel for the claimant concedes that the claimant was a worker at the time of the accident.

Section 1 of the Act defines worker as including:

> (f) an independent operator admitted by the Board under section 2 (2);

Section 2(2)(a) of the Act provides:

> The Board may direct that this Part applies on the terms specified in the Board's direction
>
> > (a) to an independent operator who is neither an employer nor a worker as though the independent operator was a worker,…

I find that the claimant was a worker within the meaning of Part 1 of the Act, pursuant to section 2(2)(a) and item (f) of the definition of the term "worker" in section 1 of the Act. Based on the evidence that the claimant was making a delivery at the time of the accident, I find that he was working at the time of the accident. I find that the injuries suffered by the claimant arose out of and in the course of his employment within the scope of Part 1 of the Act.

Status of the Defendant, Patrick Kendall Harrap

The defendant provided a signed statement to ICBC on October 22, 2004. He advised:

> I was involved in an accident on October 1 2004 in the morning. I had left my home to go to work. I am an electrician and go from job site to job site. I was on my way to a job site from my home.
>
> [all quotations in this decision are reproduced as written, except as marked, and with block capitalization removed]

The defendant provided a further signed statement to ICBC on February 20, 2005, in which he advised:

> I was involved in a motor vehicle accident on 01 Oct 2004 while I was driving my vehicle from my home to my first job site of the day. After exchanging insurance informtion with the other driver I continuued on to the work site. I am a self employed electrician. I am the sole proprietor of Lightning Installations. My office is in my home. I have an account in good standing with the WCB. I carry the tools and equipment required in the completion of my job in my vehicle.

By memorandum dated November 6, 2007, the policy manager, Assessment Department, advised that Patrick Kendall Harrap dba Lightning Installations, account 703230, was registered with the Board at the time of the October 1, 2004 accident. Coverage was for Personal Optional Protection and workers.

By memorandum dated June 3, 2008, I requested clarification from the Assessment Department with respect to the information regarding the coverage for workers:

> Counsel for Patrick Kendall Harrap has advised:
>
> > At the time of the motor vehicle accident, the Defendant was just starting up his business and had no employees (he was his own receptionist and bookkeeper).
>
> Clarification is requested from the Assessment Department regarding any additional information contained in its records regarding the coverage provided for workers other than Patrick Kendall Harrap under this registration.
>
> Comments are requested as to whether such information would indicate that Patrick Kendall Harrap was an employer at the time of the accident on October 1, 2004.

By memorandum dated June 4, 2008, a research and evaluation analyst, Assessment Department, advised that the Assessment Department records indicated that at the time of the October 1, 2004 accident this firm was operating as a proprietorship. The firm subsequently incorporated on March 1, 2007. She further noted that while forms submitted by the defendant to the Board suggested that there may have been one or more workers, Board officers had contact with the defendant on two occasions (September 17, 2003 and April 7, 2004) and recorded that he had no workers. She advised that the evidence suggested that the defendant did not employ workers or hire subcontractors between September 17, 2003 and April 7, 2004. (These additional materials were disclosed to the parties on June 5, 2008, and no additional comments were provided.)

On reviewing the evidence on this point, and noting the advice of counsel for the defendant that the defendant had no employees, I find that the defendant was not an employer within the meaning of Part 1 of the Act. His registration for coverage for workers appears to have involved some misunderstanding or confusion as to the manner in which the Assessment Department forms were to be completed.

I consider, therefore, that the defendant's status was similar to that of the claimant. I find that the defendant was a worker within the meaning of Part 1 of the Act, pursuant to section 2(2)(a) and item (f) of the definition of the term "worker" in section 1 of the Act. It is, therefore, necessary to consider whether the action or conduct of the defendant, 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.

On October 1, 2004, policy at item #14.00 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II), provided:

#14.00 ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT

Before a worker becomes entitled to compensation for injury under the *Act*, the injury must arise out of and in the course of employment.

Confusion often occurs between the term "work" and the term "employment". Whereas the statutory requirement is that the injury arise out of and in the course of employment, it is often urged that a claim should be disallowed because the injury is not work related or did not occur in the course of productive activity. There are, however, activities within the employment relationship which would not normally be considered as work or in any way productive. For example, there is the worker's drawing of pay. An injury in the course of such activity is compensable in the same way as an injury in the course of productive work.

Lack of control of a situation by the employer is not a reason for barring a claim otherwise acceptable. Control by an employer is an indicator that a situation is covered under the *Act* at a particular time, but if that control does not exist there may be other factors which demonstrate an employment connection.

No single criterion can be regarded as conclusive for deciding whether an injury should be classified as one arising out of and in the course of employment. Various indicators can be and are commonly used for guidance. These include:

(a) whether the injury occurred on the premises of the employer;

(b) whether it occurred in the process of doing something for the benefit of the employer;

(c) whether it occurred in the course of action taken in response to instructions from the employer;

(d) whether it occurred in the course of using equipment or materials supplied by the employer;

(e) whether it occurred in the course of receiving payment or other consideration from the employer;

(f) whether the risk to which the employee was exposed was the same as the risk to which the employee is exposed in the normal course of production;

(g) whether the injury occurred during a time period for which the employee was being paid;

(h) whether the injury was caused by some activity of the employer or of a fellow employee.

(i) whether the injury occurred while the worker was performing activities that were part of the regular job duties; and

(j) whether the injury occurred while the worker was being supervised by the employer.

This list is by no means exhaustive. All of these factors can be considered in making a judgement, but no one of them can be used as an exclusive test.

At the time of his motor vehicle accident October 1, 2004, the defendant was driving his truck in which he carried the tools and materials necessary to his work and was travelling to a job site. I do not consider that the general criteria set out in RSCM II item #14.00 provide sufficient basis for determining the defendant's status at the time of his injury. I find it necessary to consider the effect of the further policies in Chapter 3 of the RSCM II concerning travel.

By submission of November 26, 2007, counsel for the defendant argued:

> In the Defendant's submission, the following facts demonstrate that this trip was connected to the Defendant's employment:
> 1. He is travelling from his only office to the worksite. This is not a case where the worker's business maintains an office, but the worker may also work from home.
> 2. He is travelling to the first worksite of the day. He apparently has multiple worksites to visit during the day. Therefore, this is not the case of a tradesman who is employed by a contractor and attends the same worksite day after day, travelling directly between home and the worksite.
> 3. He carries his tools with him. For all practical purposes, the Defendant's truck is as much his office as his home. His tools of his trade are with him. He brings his tools to each new worksite. The journey is tide to the employment, as he would not be able to undertake the work without his tools.

Section 246.1(1) of the Act provides:

> The appeal tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

WCAT's *Manual of Rules of Practice and Procedure* provides, at item #20.43, "Evidence":

> Evidence may be submitted in any form including handwritten statements of witnesses, business records, sworn affidavits, transcripts of evidence given under oath at an Examination for Discovery, or *viva voce* evidence at an oral hearing before WCAT. While the strict rules of evidence do not apply, the form of the evidence may affect the weight given to it.

By memorandum of May 13, 2008, I requested additional evidence regarding the nature of the defendant's activities on or around the day of the accident. I noted that very little evidence had been provided on which to base a decision regarding the status of the defendant. In that memorandum, I posed three questions and noted: "The additional evidence may be provided in a handwritten signed statement by the defendant, or in an affidavit."

By submission of May 22, 2008, (different) counsel for the defendant advised as follows:

> …we enclose the answers to the questions outlined by the panel.
>
> Question #1: Did he conduct any work activity in his home office on October 1, 2004 prior to leaving to travel to a job site?
>
> Answer: Yes, the Defendant was doing some paper work in his home office on October 1, 2004 prior to leaving to travel to a job site.
>
> Question #2: On October 1, 2004, would he have worked all day at the same job site? Alternatively, would he have worked at more than one job site? If so, how many?
>
> Answer: On October 1, 2004, the Defendant spend the entire day on the same job site.
>
> Question #3: Around the time of the accident, did the Defendant typically go to one job site for a whole day or several days, or did he typically go to multiple job sites each day?

> Answer: Around the time of the accident, the Defendant typically stayed at one job site for a whole day or several days.

Counsel for the defendant further noted that the defendant was able to provide invoices for work done beginning January 1, 2005 and onward, if these were required.

While direct evidence from the defendant would have been preferable, I accept that the information conveyed by counsel for the defendant accurately sets out the defendant's evidence. It remains necessary to consider the weight to be given to this evidence.

Having regard to the defendant's evidence that around the time of the accident he typically stayed at one job site for a whole day or several days, I do not consider that he was a travelling employee. He did not travel to multiple work sites each day, so that such travel might be viewed as a substantial aspect of his employment. His circumstances are not analogous, for example, to those of the plaintiff in *WCAT Decision #2003-00896-AD*, "Status Determination: Worker or Independent Operator," 19 W.C.R. 143. The plaintiff in that case was a rehabilitation consultant who was injured in a motor vehicle accident while travelling from home to a client's home to provide rehabilitation services. That decision found that travel was a substantial aspect of the plaintiff's employment and, as a result, she was a travelling employee with workers' compensation coverage in relation to her travel from the time she left her home (provided she did not first attend the premises of her employer).

WCAT Decision #2003-00896-AD distinguished the circumstances of the rehabilitation consultant from those of the plaintiff in an earlier Appeal Division decision. *Appeal Division Decision #98-0869*, "Irregular Starting Points (No. 3)," 15 W.C.R. 205, concerned a painter who was involved in an accident while on his way to his assigned work site for the day. That decision addressed the effect of the policy in the last paragraph of #18.32 regarding irregular starting points. That policy provided:

> **Where a worker has a regular or usual place of employment** and is assigned temporarily to work at a place other than the regular place of employment, the worker is covered for compensation while travelling to and from that temporary place, and this is so whether the worker goes there from the regular place of employment or goes there directly from home. The same rule applies, for example, to a delivery person who goes direct from home to make deliveries.
>
> [emphasis added]

The panel concluded that the policy on irregular starting points was not intended to extend coverage to an employee while traveling to their employment solely on the basis that the worker's employment involved travel to different starting points. The decision found that the existence of a "regular or usual place of employment" was a condition precedent to the application of the policy in the last paragraph at #18.32, in respect of providing coverage for travel to a different work location. That decision found that the

painter's accident in that case, in travelling to a jobsite, had not occurred in the course of his employment.

I do not consider the fact that the defendant had a home office would suffice, by itself, to establish that the home office should be viewed as a "regular or usual place of employment" for the purposes of the policy in the last paragraph of #18.32.

I have also considered whether the defendant should be viewed as being covered for workers' compensation purposes in respect of his travel based on the fact that he used his truck to transport tools and materials which were necessary to his work. On October 1, 2004, policy at RSCM II item #20.40 provided:

> **#20.40 Provision of Clothing and Equipment Required for Job**
>
> **The fact that a worker is required to provide tools for the job does not mean that carrying the tools to work or away from work becomes part of the employment**. A worker may have to satisfy many prerequisites before obtaining a job, for example, education, experience, physical condition, clothing, equipment, or travelling to the work site. After the completion of a job, a worker may have to carry out various activities of a consequential nature, for example, cleaning clothes, removing equipment or travelling from the work site. None of these activities are normally covered as part of a worker's employment under the *Act*. Nor does the mere fact that the employer pays certain expenses associated with these activities result in coverage.
>
> [emphasis added]

While the transportation of work-related materials might, in some instances, be of such significance as to be viewed as being part of the employment (see *WCAT Decision #2006-00564-AD*), I consider that the defendant's circumstances in this case are appropriately addressed on the basis of the policy at RSCM II item #20.40.

As the defendant was not a travelling employee, he would not normally be covered for workers' compensation purposes in respect of his travel between his home and the jobsite. A question for consideration, however, is whether workers' compensation coverage would apply to his travel from his home to the worksite on October 1, 2004, in light of the defendant's evidence that he had a home office and was doing some paperwork in his home office on October 1, 1004 prior to leaving to travel to a job site. Such evidence could support a conclusion that the defendant's travel at the time of the accident involved travel between two working points.

At the time of the accident on October 1, 2004, policy at item #18.32, "Irregular Starting Point," in the RSCM II provided in part:

> Another situation is where there is an injury occurring in the course of a journey between what might be called two working points. That is, where the worker terminates productive activity at one point and then has to travel to commence productive activity at another point. If that occurs in the course of a working day, then the travel is one of the requirements of the job. It is one of the functions that the worker has to perform as part of the employment whether or not the worker is paid for it. **Where the worker terminates productive activity at one point and is required to commence productive activity at another point, travel between those points is part of the employment and is in the course of employment as long as the worker is travelling reasonably directly and is not making major deviations for personal reasons**.
>
> A different situation arises when the job function requires the worker, after first reporting to the employer's premises or assembly area, to travel to a work location. Clearly, the worker's travel from home to the employer's premises or assembly area would be considered commuting and, as such, would not warrant compensation coverage. The worker's travel from the employer's premises or assembly area to the point where he or she will begin work is normally covered as being in the course of employment. This situation is distinct from that of union members who go from a hiring hall to different work locations and, perhaps, to different employers each day. (See policy item #18.22, third paragraph, "Stevedores".)

Arguably, it may be considered that the defendant's travel from his home office to the work site involved travel from the employer's premises to a work location. Alternatively, it may be considered that the defendant's actions in doing paperwork in his home office, and his subsequent travel to a work site, involved a termination of productive activity at one point followed by travel to commence productive activity at another point which would be covered for workers' compensation purposes by the policy at RSCM II item #18.32.

WCAT Decision #2003-02640 concerned a plumber who was the principal of a plumbing company. At the time of his motor vehicle accident, the plumber was travelling from a job site to his home. The panel concluded that the plumber would not be conducting productive activity at the home office. Applying item #18.32, the panel concluded that the plumber was not travelling from one productive work site to another and, accordingly, was not in the course of his employment at the time of the accident.

WCAT Decision #2005-02294-AD concerned a plaintiff who was an electrician. His business involved electrical work in various locations around Nanaimo, Parksville, Qualicum and Ladysmith on Vancouver Island. He carried the equipment used in his work in his van, which was marked with the name of his business. He had a "shop" in his basement, and a computer in an upstairs room which was used for the business. That decision reasoned:

> Where a worker is simply picking up materials to take to work, I do not consider that this is reasonably characterized as involving a commencement and termination of productive activity. Accordingly, I would not view the plaintiff's actions (within his home) of going to the "shop" in the basement to get his truck keys and put on his work shoes and coat, and of going to the office to get his briefcase, as having involved productive activity. I am reinforced in my analysis by the policy at #20.40, "Provision of Clothing and Equipment Required for Job", which states:
>
> > Changing clothes prior to starting or after finishing work is not normally part of the employment, whether it takes place at home, on the employer's premises or elsewhere.

WCAT Decision #2005-02294-AD further reasoned:

> It is also necessary to consider whether the plaintiff's movements within his house, to the shop and office, constituted "reporting to the employer's premises", within the meaning of the third paragraph of #18.32….
>
> The policy refers to the situation where the worker has "travelled" from home to the employer's premises, with such travel being considered "commuting". To my mind, this policy was not intended to apply to the situation where a worker merely walks down the hallway of their home to their office. While it is true that such "travel" would not be compensable, I am not persuaded that the policy was intended to apply to such situations to make subsequent travel (from the plaintiff's home office to a work destination) compensable. For the purposes of this decision, I am not considering the situation of a worker who first spends part of their workday engaged in productive activity in their home-based office or shop.

An application for reconsideration of that decision was denied (*WCAT Decision #2006-00593*).

WCAT Decision #2006-03704 similarly reasoned:

> Turning to the policy at [#18.32] and the submission that the defendant was between two working points when the accident occurred, I find very

> little evidence to support that proposition. The defendant did have a home office but there is no evidence that he worked in that office prior to leaving for the work site. Implicit in the WCAT decisions cited by counsel, *Decisions #2005-02294*, *#2005-05472* and *#2003-01173,* is the view that the existence of a home office is not, in itself, sufficient to establish a private residence as the employer's premises for the purposes of policy. Nor is the existence of a home office, in itself, sufficient to establish that a worker was travelling between two working sites during a journey from his home to a work site. There must be evidence that the worker was actually working in his home prior to leaving for a work site. I agree with that reasoning and, in this case, the evidence does not establish that the defendant was engaged in productive employment activity prior to leaving his home for the Solex plant.

I do not consider that the fact the defendant did some paperwork in his home office on October 1, 2004 should be viewed as comparable to travel to the employer's premises. A more significant issue concerns whether the defendant should be viewed as having commenced productive activity in his home-based office by virtue of having done some paperwork.

A case in which workers' compensation coverage was found to apply in relation to travel following productive work at home was *WCAT Decision #2003-01173*. The plaintiff, a research assistant, worked at a research facility and also had a home office where she performed some of her work. Her income tax returns indicated that she claimed tax deductions for expenses related to her home office. On the day of the accident, she was walking from her home to the hospital, sometime after one o'clock in the afternoon, when she was struck by a courier on a bicycle. Her evidence was that she had spent the morning working at home, writing an article for publication, and was on her way to the research laboratory to continue working. Her supervisor had given evidence that research assistants were considered professionals and were permitted to review manuscripts and conduct other work related to their research at home. The panel in that case found that the plaintiff was travelling between two work sites when the accident occurred and she was therefore covered under the Act.

In this case, neither of the statements provided by the defendant to ICBC on October 22, 2004 and February 20, 2005 made any reference to his having performed work at his home office prior to embarking on his drive to the worksite on October 1, 2004. In his February 11, 2005 statement, the defendant simply noted that he had a home office and was driving his vehicle "to my first job site of the day" at the time of the accident. No reference was made to his having performed any work prior to the accident.

By submission of May 23, 2008, counsel for the claimant argued that the onus is on the defendant to present evidence to show that productive work activity was going on at home prior to his leaving for the job site on October 1, 2004. He argues, in connection with the evidence forwarded by counsel for the defendant on May 22, 2008:

> When answering this question, the Defendant clearly knew that the purpose of the question was to determine if he was doing productive work in his home prior to leaving. Despite this knowledge, the best he could say is "some paper work". This answer is vague. There is no explanation as to the type of paper work, the amount of paper work, the time spent, or what specifically was done. "Some paper work" could simply mean the Defendant picked up a sheet of paper from one location and put it in another location. It could mean the paper work was for personal reasons and not work reasons. It could mean he grabbed a sheaf of papers prior to leaving. It does not in any way speak to the issue of whether the "paper work" was a work activity, or, more importantly, whether it was a productive work activity, which is the test the Defendant has to meet. The panel is left completely in the dark as to what "paper work" was being done.

Counsel for the claimant argues that the defendant's evidence is not accidentally vague. If the defendant had been doing specific work at his home prior to leaving, he would have expanded on his answer. Counsel for the claimant submits that credible evidence has not been presented to show that productive work activity was done on the morning in question.

By rebuttal of June 2, 2008, counsel for the defendant submits:

> At the time of the motor vehicle accident, the Defendant was just starting up his business and had no employees (he was his own receptionist and bookkeeper). His home office was where he kept his business records and operated the administrative aspects of his business such as preparing accounts for past contract work, and scheduling and preparing orders for prospective contract work. The Defendant maintains that on the date of the accident he was doing administrative paper work related to his business before getting into his vehicle and travelling to the job site to do the electrical work for which he had been contracted.

The evidence on file indicates that at the time of the accident, the defendant resided on 64th Avenue in Delta, B.C. The accident occurred around 7:20 a.m. Given the distance between Delta and New Westminster, the early time of the accident, and the fact that the defendant intended to perform work as an electrician at a job site on the day in question, it appears unlikely that the unspecified paperwork was of a substantial nature. While it is possible that the defendant could have arisen at a very early hour to perform an hour of paperwork in his home office, I agree with the submission of counsel for the

claimant that the defendant would have likely provided such particulars if that were the case.

While I do not consider that there is any onus on a party, the defendant is in the best position to provide any relevant evidence as to the nature of his activities in his home office on the morning of the accident. The evidence that he performed paperwork, without additional particulars as to the duration of this activity, or the nature of this activity, raises a concern that this may simply have involved something as brief as writing down the address of the jobsite to which he would be travelling on the day in question, or initiating a draft invoice for the work to be performed that day.

The general policy at RSCM II, item #18.00, "Travelling to and From Work," provides:

> The general position is that accidents occurring in the course of travel from the worker's home to the normal place of employment are not compensable. But where a worker is employed to travel, accidents occurring in the course of travel are covered. This is so whether the travel is a normal part of the job or is exceptional.

Policy at #18.20, "Provision of Transportation by Employer," further provided:

> An employer may directly or indirectly provide transportation for its employees' journeys to and from work. In situations where this involves providing a specific vehicle such as, for example, a crew bus, in which the journeys are made, compensation coverage is generally extended to injuries occurring while travelling in this employer-owned vehicle. In some situations, the employer may let the worker choose her or his own mode of transportation, but pay for all or part of the costs of this transportation. The employer may also pay the worker a wage for the time spent in travelling. **While these factors must be considered, the basic question to be determined is whether or not the worker is routinely commuting to or from work. The fact that coverage does not extend to include routine commuting could override the fact that the worker is being paid a travel allowance or a wage to cover the commuting**. This is distinct from the crew bus situation described above which can be deemed to be an extension of the employer's premises.
>
> [emphasis added]

I am not persuaded that the making of a brief phone call from a home office, or some brief activity in performing paperwork at a home office, necessarily amounts to having commenced productive activity at one work site for the purposes of the policy at RSCM II item #18.32 so as to provide coverage for the whole of the subsequent journey to a work site. It is commonly the case that a worker may make a work-related phone call, check work e-mails, or perform some brief paperwork, before driving to the employer's premises. Such a brief activity is not, in my view, sufficient to transform a

journey which would normally not be covered for workers' compensation purposes into a journey between two working points as contemplated by RSCM II item #18.32. Such activities may be characterized as being preparatory or consequential in nature, rather than involving the performance of productive activity for the purposes of the policy at RSCM II item #18.32. I consider that some clearer or more substantial evidence is required to establish that the defendant's home office had become a "working point," before the defendant's travel to a jobsite would be covered for workers' compensation purposes.

I appreciate, in this regard, that there are activities within the employment relationship which would not normally be considered as work or in any way productive (as set out in RSCM II item #14.00). An injury in the course of such activity is compensable in the same way as an injury in the course of productive work. My consideration as to whether the defendant had been engaged in productive activity at home on the morning of October 1, 2004 was directed towards considering whether the defendant's activities came within the terms of the particular policy at RSCM II item #18.32 (regarding the termination of productive activity at one point followed by travel to commence productive activity at another point).

Upon consideration of the foregoing, I find that any action or conduct of the defendant, which caused the alleged breach of duty of care, did not arise 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 October 1, 2004 motor vehicle accident:

(a) the claimant, Daljit Singh Bal, was a worker within the meaning of Part 1 of the Act;

(b) the injuries suffered by the claimant, Daljit Singh Bal, arose out of and in the course of his employment within the scope of Part 1 of the Act;

(c) the defendant, Patrick Kendall Harrap, was a worker within the meaning of Part 1 of the Act; and,

(d) any action or conduct of the defendant, Patrick Kendall Harrap, which caused the alleged breach of duty of care, did not arise 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. M0012660
NEW WESTMINSTER REGISTRY

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(SMALL CLAIMS COURT)

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

BETWEEN:

DALJIT SINGH BAL

CLAIMANT

AND:

PATRICK KENDALL HARRAP

DEFENDANT

C E R T I F I C A T E

UPON APPLICATION of the Defendant, PATRICK KENDALL HARRAP, 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, October 1, 2004:

1. The Claimant, DALJIT SINGH BAL, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. The injuries suffered by the Claimant, DALJIT SINGH BAL, arose out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act*.

3. The Defendant, PATRICK KENDALL HARRAP, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

4. Any action or conduct of the Defendant, PATRICK KENDALL HARRAP, which caused the alleged breach of duty of care, did not arise out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act.*

CERTIFIED this day of June, 2008.

_____

Herb Morton
VICE CHAIR

NO. M0012660
NEW WESTMINSTER
REGISTRY

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
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BETWEEN:

DALJIT SINGH BAL

CLAIMANT

AND:

PATRICK KENDALL HARRAP

DEFENDANT

SECTION 257 CERTIFICATE

WORKERS' COMPENSATION APPEAL TRIBUNAL
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