

Noteworthy Decision Summary

Decision: WCAT-2010-02964 **Panel:** Warren Hoole **Decision Date:** November 8, 2010

Section 151 of the Workers Compensation Act – Application of discriminatory action provisions to filing of compensation application

This decision is noteworthy for its analysis of whether the section 151 discriminatory action provisions of the *Workers Compensation Act* (Act) apply to the bare filing of an application for compensation.

The worker was injured in a motor vehicle accident during the course of his employment on February 26, 2007. In his "complaint of discriminatory action" filed with the Board the worker stated that one of the employer's supervisors pressured him not to file a claim for compensation with the Board, as the claim would affect employer bonuses. The worker alleged that his employment was terminated because he filed an application for compensation with the Board in relation to the motor vehicle accident. The Workers' Compensation Board, operating as WorkSafeBC (Board), concluded that the employer dismissed the worker for filing an application for compensation in relation to a work injury. The Board found that the worker's termination therefore constituted discriminatory action contrary to section 151 of the Act. The employer appealed the Board's decision to WCAT.

The WCAT panel varied the Board's decision, finding that the employer did not engage in discriminatory action against the worker contrary to section 151 of the Act. The panel concluded that the discriminatory action provisions of the Act do not apply to the bare filing of an application for compensation, that is an application which does not implicate health and safety concerns beyond the fact of his work injury. This is particularly so where the application does not raise any obvious occupational health and safety deficiencies on the part of the employer. The panel came to this conclusion for several reasons:

- Section 151 of the Act protects activities that fall under Part 3 of the Act. Filing of a claim is an activity that falls under Part 1 of the Act.
- Section 177 creates an obligation on employers not to suppress claims. It does not mention a corresponding right on the part of workers to file claims, thus filing of claims is not brought under Part 3 of the Act.
- Other methods are available in the Act to deal with employers that attempt to engage in claim suppression, such as administrative penalties or even criminal sanctions so this type of conduct is addressed through means other than the discriminatory action provision.
- A claim for compensation is not a report of impairment within the meaning of section 4.19 of the *Occupational Health and Safety Regulation*. It follows that filing a claim for compensation does not engage subsection 151(1)(a) of the Act.

This decision was the subject of a reconsideration. See WCAT-2012-01430, dated May 29, 2012.

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Introduction

- [1] This appeal involves a discriminatory action complaint. In a decision letter dated January 29, 2009, the Workers' Compensation Board, operating as WorkSafeBC (Board), concluded that the employer dismissed the worker for filing an application for compensation in relation to a work injury. The Board found that the worker's termination therefore constituted discriminatory action contrary to section 151 of the *Workers Compensation Act* (Act).
- [2] The employer now appeals the Board's January 29, 2009 decision to the Workers' Compensation Appeal Tribunal (WCAT).
- [3] In a letter dated June 21, 2010, I requested submissions on the preliminary question of whether the filing of a claim for compensation engages the discriminatory action provisions of the Act. This is my decision on the preliminary question. Because the preliminary question turns on a legal question of statutory interpretation, I consider that the appeal may fairly proceed by written submissions at this stage.

Issue(s)

- [4] Did the employer discriminate against the worker contrary to section 151 of the Act?

Jurisdiction

- [5] Subsection 240(1) of the Act provides a right of appeal to WCAT from a decision of the Board regarding a complaint of unlawful discrimination.

Background and Evidence

- [6] Because this appeal turns primarily on statutory interpretation I need set out only a brief overview of the most relevant background to the worker's circumstances.
- [7] The worker was injured in a motor vehicle accident during the course of his employment on February 26, 2007. According to the worker's report, his vehicle was struck at low speed on the driver's side while making a left turn into a rest stop. The worker was wearing his seat belt at the time. The worker indicated that the other driver was charged with "unsafe passing" as a result of the motor vehicle accident.

- [8] In his “complaint of discriminatory action” filed with the Board on June 1, 2007, the worker stated that one of the employer’s supervisors pressured him not to file a claim for compensation with the Board. The worker understood from the supervisor that a compensation claim would cost the employer \$20,000 in bonuses. The supervisor offered to continue paying the worker full wages until his injury resolved. The worker agreed; however, his injury did not improve and he decided to file a claim with the Board at the end of April 2007.
- [9] According to the worker, the supervisor “became upset” with the worker when he discovered the worker’s claim for compensation with the Board. The supervisor continued to be “very mad” at the worker. The supervisor did not specifically reference the worker’s compensation claim; however, the worker knew the supervisor was angry about the compensation claim. The worker then received a letter of termination on May 1, 2007. The worker alleges that his employment was terminated because he filed an application for compensation with the Board in relation to the February 26, 2007 motor vehicle accident.

Submissions

- [10] The employer says that, in filing a claim for compensation with the Board, a worker does not engage the discriminatory action provisions of the Act. The discriminatory action provisions of the Act are said to only protect a worker’s activities under Part 3 of the Act. However, a worker’s right and obligation to file a report of injury with the Board is found in Part 1 of the Act. As a result, the employer says that filing a report of injury does not engage the discriminatory action provisions of the Act.
- [11] The employer agrees that section 177 of the Act prohibits an employer from engaging in claim suppression. The employer further agrees that section 177 is found in Part 3 of the Act; however, the employer contends that section 177 creates an obligation for employers and not a right for workers.
- [12] If an employer breaches section 177, the correct remedy would be an administrative order or penalty rather than a finding of discriminatory action against the employer. This is particularly so because, even if an employer engages in claim suppression, such conduct will not prevent the worker from securing compensation for a personal injury under the Act.
- [13] In support of its submission, the employer refers me to *WCAT-2004-04669*, dated September 2, 2004, and *WCAT-2010-00781*, a “Noteworthy Decision” dated March 17, 2010. The employer points out that these decisions both concluded that filing of a claim for compensation did not engage the discriminatory action provisions of the Act. For these reasons, the employer submits that the preliminary question must be resolved in the employer’s favour, with the result that its appeal of the worker’s discriminatory action claim be allowed.

- [14] The worker notes the diverging cases in relation to whether claim suppression amounts to discriminatory action under the Act. The worker prefers the approach set out in *Appeal Division Decision #2002-2505*, dated September 26, 2002, where the panel concluded that filing a claim for compensation was an activity protected under section 151 of the Act.
- [15] Even if the approach in *WCAT-2004-04669* and *WCAT-2010-00781* is correct, the worker submits that the circumstances are distinguishable and that each case must be decided on its merits, rather than as an abstract question of law outside the individual context of the claim of discriminatory action. In *WCAT-2010-00781*, the panel addressed a case where the employer believed that the worker's injury occurred outside work and therefore terminated his employment for lying rather than for filing a claim.
- [16] The worker says that his circumstances are quite different. The employer clearly knew of the worker's work injury and clearly knew that it arose out of and in the course of his employment. The worker in this case was therefore not acting improperly; rather, it was the employer that was engaged in questionable conduct.
- [17] In addition, because the motor vehicle accident resulted in the worker being impaired in his ability to work, section 4.19 of the *Occupational Health and Safety Regulation*, B.C. Reg. 296/97 (OHS Regulation), required him to report any injury or impairment to his employer. The filing of a report of injury with the Board is said to be the equivalent of a report under section 4.19 of the OHS Regulation and therefore to engage the discriminatory action provisions of the Act.
- [18] The worker directs me to several other factors in his circumstances that suggest section 151 of the Act should be available to him. First, the purposes of the Act, as set out particularly in section 107, section 108, and paragraph 111(2)(a) of the Act, clearly favour a comprehensive scheme of occupational health and safety in the Province. These purposes must be interpreted in a fair, large, and liberal manner in accordance with section 8 of the *Interpretation Act*.
- [19] Second, the rules of statutory interpretation presume that legislation is coherent and consistent. Legislation is to be interpreted in its entire context and each aspect of the legislation should be presumed to fit within the overall scheme and purposes of the legislation.
- [20] With these interpretive principles in mind, the worker refers me to section 177 of the Act and submits that this section, when read liberally and in accordance with the purposes of the Act, necessarily confers on a worker the right to file a claim for compensation. Because section 177 is found in Part 3 of the Act, it follows that filing a claim for compensation is an example of a worker engaging subsection 151(a) of the Act by "...exercising any right...in accordance with" Part 3. To reach the contrary conclusion would be to interpret too narrowly the provisions in question and therefore frustrate the important purposes of ensuring safe workplaces in the Province.

- [21] In the alternative, the worker says that subsection 151(c) covers a report of injury to the Board and that the filing of a claim for compensation therefore engages the prohibition against discriminatory action.
- [22] Finally, the worker submits that it would be unfair for any ambiguity in the Act to be used as a shield for occupational health and safety violations. The worker says that, in order to exclude the filing of a claim for compensation from the protection of the discriminatory action provisions of the Act, such exclusion must be clear and unambiguous. This is not the case here and in order to encourage safe workplaces the worker submits that filing a claim for compensation must be a protected activity under the discriminatory action provisions of the Act.
- [23] The worker therefore requests that I resolve the preliminary issue in his favour and proceed to hear the substantive merits of the employer's appeal.

Reasons and Findings

- [24] I note at the outset that, before even having regard to the discriminatory action provisions of the Act, basic notions of justice rebel against the notion that an employer does not offend section 151 of the Act by terminating a worker's employment merely for filing a compensation claim with the Board.
- [25] Nevertheless, I reluctantly conclude that the discriminatory action provisions of the Act do not apply to the bare filing of an application for compensation. This is particularly so where, as here, the application does not raise any obvious occupational health and safety deficiencies on the part of the employer.
- [26] I say that the current appeal does not involve any obvious health and safety deficiencies because the motor vehicle accident in question appears to have been the fault of another driver, the worker was wearing a seatbelt, and there is no indication that the employer's safety program was in any way implicated in the worker's injury. It is for this reason that I describe the worker's circumstances as involving a "bare" application for compensation without implicating larger health and safety concerns beyond the fact of his work injury.
- [27] However, the worker has raised several potential statutory bases for concluding that the filing of a bare claim for compensation is an activity that engages the discriminatory action provisions of the Act. I will address each in turn.

A. Subsection 151(a) of the Act

[28] Section 151 is found in Part 3 of the Act, and states, in relevant part:

151 An employer or union, or a person acting on behalf of an employer or union, must not take or threaten discriminatory action against a worker

(a) for exercising any right or carrying out any duty in accordance with this Part, the regulations or an applicable order...

[29] The only provisions of the Act or any regulations under the Act explicitly charging workers with the right and duty to file a claim for compensation are found in sections 53 and 55 of Part 1 of the Act. Consequently, in order for subsection 151(a) of the Act to protect such activities, the reference to “this Part” must be interpreted so as to apply more broadly than merely in relation to Part 3 of the Act.

[30] The correct approach to statutory interpretation in Canada is referred to as the “modern principle” and was described, for example, in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27:

21 Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter “Construction of Statutes”); Pierre-André Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991)), *Elmer Driedger in Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament....

[31] Turning to subsection 151(a) of the Act, the subsection indicates that it will be engaged where a worker exercises “any right or [carries] out any duty in accordance with this Part, the regulations or an applicable order.” The ordinary and grammatical sense of the phrase “this Part” necessarily excludes rights or duties found outside Part 3 of the Act.

- [32] The context of the Act generally indicates that the Legislature has differentiated between a Part and the entire Act on numerous occasions throughout the legislation. Indeed, even within section 151, the Legislature directs that subsection (b) relate to the Act rather than just to Part 3.
- [33] In these circumstances, I have little difficulty in concluding that the use of the phrase “this Part” in subsection 151(b) was clearly intended to mean that only those activities set out in Part 3 of the Act will attract the protection of the discriminatory action provisions.
- [34] For his part, the worker suggests that subsection 151(a) should be read broadly and in a manner that best achieves the purposes of ensuring safe workplaces throughout the Province.
- [35] I agree that an expansive and purposive interpretation is appropriate in relation to subsection 151(a); however, that does not permit me to ignore its clear wording. I also note that the discriminatory action provisions are not the only method available in the Act to ensure safe workplaces. On the contrary, section 196 of the Act authorizes the Board to levy substantial administrative penalties on an employer for contravening Part 3 of the Act.
- [36] Because section 177 of the Act, which is found in Part 3, prohibits an employer from engaging in claim suppression activities, the Board maintains the ability to sanction such behaviour through the administrative penalty regime. Indeed, such behaviour even has the potential to attract criminal sanctions under section 213 of the Act.
- [37] It therefore follows that other methods are available in the Act to deal with employers that attempt to engage in claim suppression. This in turn means that the underlying purpose of ensuring safe workplaces does not depend exclusively on the discriminatory action provisions of the Act. As a result, even a purely purposive analysis does not require the broad interpretation the worker favours.
- [38] Consequently, although not bound by prior WCAT decisions, I agree with the panels in *WCAT-2004-04669* and *WCAT-2010-00781*. I therefore find that subsection 151(a) of the Act does not apply to an employer’s termination of a worker’s employment for the worker filing a bare claim for compensation with the Board.
- [39] I emphasize that my conclusion in relation to subsection 151(a) of the Act is not intended to apply to claims for compensation that describe not only a work injury but also raise significant health and safety concerns. Rather, my conclusion is only intended to apply to what I have described as “bare” claims for compensation that do not include a significant health and safety dimension. For example, if an application for compensation indicated that an injury arose because of improper lockout procedures or inadequate fall protection, the application would be more than a bare claim for compensation and would also demonstrate a significant occupational health and safety

dimension. In such a case, an employer would terminate a worker's employment at its peril. However, that is not the case here and it follows that the worker's claim in the current appeal does not engage subsection 151(a) of the Act.

B. Subsection 151(c) of the Act

[40] Subsection 151(c) of the Act provides:

151 An employer or union, or a person acting on behalf of an employer or union, must not take or threaten discriminatory action against a worker

(a) ...

(b) ...

(c) for the reason that the worker has given any information regarding conditions affecting the occupational health or safety or occupational environment of that worker or any other worker to

- (i) an employer or person acting on behalf of an employer,
- (ii) another worker or a union representing a worker, or
- (iii) an officer or any other person concerned with the administration of this Part.

[41] The worker did not provide a detailed submission in relation to subsection 151(c); however, as I understand his position, he says that a report of injury is equivalent to giving information regarding occupational health and safety to a Board officer.

[42] As already discussed, I agree that a report of injury might include information relevant to occupational health and safety matters and therefore engage subsection 151(c) of the Act. However, as I noted earlier, the worker's application for compensation in the current appeal does not raise any deficiencies in the employer's occupational health and safety program. Bearing in mind the principles of statutory interpretation set out above, I do not consider that the bare reporting of an injury in the course of employment amounts to providing information to a Board officer affecting the occupational health or safety of a work environment within the meaning of subsection 151(c) of the Act.

[43] In addition, I note that the reporting in question must be to "an officer...concerned with the administration of this Part." A claim for compensation is dealt with by Board officers charged with administering Part 1 of the Act, not Part 3 of the Act. For the reasons already discussed in relation to the first issue, I am unable to conclude that the specific reference to Part 3 of the Act was also intended to include matters under Part 1 of the Act.

[44] It follows that the bare filing of a claim for compensation, as in the current appeal, does not engage subsection 151(c) of the Act.

C. Section 177 of the Act

[45] The worker's third argument turns on section 177 of the Act. This provision prohibits employers from engaging in claim suppression and states:

177 An employer or supervisor must not, by agreement, threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependant of the worker, from reporting to the Board

(a) an injury or allegation of injury, whether or not the injury occurred or is compensable under Part 1,

(b) an illness, whether or not the illness exists or is an occupational disease compensable under Part 1,

(c) a death, whether or not the death is compensable under Part 1,
or

(d) a hazardous condition or allegation of hazardous condition in any work to which this Part applies.

[46] The worker submits that, purposively interpreted, section 177 confers a right on workers to file a claim for compensation. If this were so, the right to file a claim would be one within Part 3 of the Act, with the result that subsection 151(a) of the Act would be engaged.

[47] Again, the worker's proposed purposive interpretation comes at the expense of the plain, unambiguous wording of the provision in question. Section 177 creates an obligation on employers not to suppress claims. It does not mention a corresponding right on the part of workers to file claims.

[48] In addition, as already discussed above, a contravention of section 177 will expose an employer to a potential administrative penalty or even criminal sanction. It is therefore apparent that the Act provides a mechanism to ensure compliance with section 177 and discourage claim suppression. These enforcement options further weaken the worker's position that the important purpose of encouraging compliance requires interpreting section 177 as conferring a right on workers to file claims for compensation. It follows that the worker's reliance on a purely purposive interpretation of this section is unpersuasive and cannot displace the clear wording of the section.

[49] I also note that, in the overall context of the Act, the duty and right to file a claim has already been set out by the Legislature in section 53 and section 55 of Part 1 of the Act. It would therefore appear unnecessary and redundant to interpret section 177 as again conferring the same right. Indeed, Sullivan states at page 159 of *Sullivan and Driedger on the Construction of Statutes* (4th ed.):

It is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain. Every word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose....

[footnotes omitted]

[50] In my view, the worker's proposed interpretation of section 177 would effectively make much of sections 53 and 55 redundant, contrary to the basic interpretive principle set out above that every word of the Legislature is intended to have meaning.

[51] For all these reasons, I am therefore unable to conclude that section 177 of the Act confers a right or duty on workers to file a claim for compensation. This means that section 177 cannot be interpreted in a manner that engages the discriminatory action provisions of the Act. As a result, the worker's argument in this regard cannot succeed.

D. Section 4.19 of the OHS Regulation

[52] Section 4.19 of the OHS Regulation requires a worker to advise his or her employer of any physical or mental impairment likely to make the workplace unsafe for the worker or others.

[53] In this case, the worker's motor vehicle accident caused an impairment of the kind captured under section 4.19 of the OHS Regulation. The worker says that he was therefore required by the OHS Regulation to report his injury and that filing his claim for compensation accomplished this task. Consequently, the worker concludes that he was "...carrying out any duty in accordance with...the regulations..." within the meaning of subsection 151(a) of the Act.

[54] I am unable to agree with the worker's argument on this point. It is true that filing an application for compensation with the Board may have the tangential consequence of alerting an employer to a worker's physical or mental impairment; however, that is not the purpose of a claim for compensation. Rather, a claim for compensation is directed solely to the Board. Moreover, a claim may take several days to be processed by the Board, with the result that, in the interim, a worker could be impaired at a work site without the employer having any knowledge of this impairment. The worker's proposed interpretation therefore suffers from two shortcomings.

[55] First, the plain wording of section 4.19 requires communication between workers and employers and is silent with respect to communication between workers and the Board.

Second, the purpose underlying section 4.19 of ensuring that employers appropriately manage impaired workers on the work site would be significantly undermined if employers were not made aware of the impairment until contacted by the Board.

- [56] Consequently, I do not consider that the duty set out in section 4.19 of the OHS Regulation is satisfied by the mere filing of a claim for compensation with the Board. It follows that a claim for compensation is not a report of impairment within the meaning of section 4.19 of the OHS Regulation. It further follows that filing a claim for compensation does not engage subsection 151(a) of the Act in the manner proposed by the worker.
- [57] In summary, I am unable to agree with any of the worker's arguments that the bare filing of a claim for compensation is an activity protected by the discriminatory action provisions of the Act. Because other enforcement mechanisms exist to discourage claim suppression, the purposes of the Act are sufficiently fulfilled such that it is not necessary or appropriate to prefer the awkward, purpose-driven interpretation proposed by the worker rather over the plain meaning of the provisions in question.
- [58] As a final point, I note that notions of fairness and justice might well militate in favour of extending the scope of section 151 of the Act so that it expressly protects the bare filing of a claim for compensation. However, this is a matter for the Legislature to remedy, not the WCAT. This means that the current Act, properly interpreted, does not apply to the worker's circumstances in this appeal. I therefore find that the employer did not discriminate against the worker contrary to section 151 of the Act.
- [59] As a result, I must resolve the preliminary question in the employer's favour and I allow its appeal.

Conclusion

- [60] I vary the Board's January 29, 2009 decision. I find that the employer did not engage in discriminatory action against the worker contrary to section 151 of the Act.
- [61] No expenses were requested and none are apparent. Consequently, I make no order for the reimbursement of expenses.

Warren Hoole
Vice Chair

WH/gl