NOTEWORTHY DECISION SUMMARY

Decision: WCAT-2015-03765 **Decision Date**: December 15, 2015
Panel: Joanne Kembel, Warren Hoole, Andrew Pendray

Section 151 of the Workers Compensation Act – Discrimination against workers prohibited – Termination of employment for filing compensation claim

This decision is noteworthy for its conclusion that a "bare" claim for compensation is not a protected activity under section 151 of the *Workers Compensation Act* (Act).

The worker injured his shoulder in 2011. The worker did not file a claim immediately, but his injury became progressively worse, and in 2012 his physician filed a report with the Workers' Compensation Board, operating as WorkSafeBC (Board). When the Board contacted the worker, he provided the details necessary to start a claim. The worker was off work for a week. When he returned to work, he informed the employer that a claim was being opened for his shoulder injury. The employer terminated the worker's employment the next day, with two weeks' severance pay.

The employer denied that it terminated the worker's employment because of the claim to the Board. The employer said the worker was terminated because of his attitude and because of a shortage of work. The worker confirmed that he did not raise safety concerns with the employer or with the Board.

The Board rejected the worker's claim initially, but the Review Division concluded the claim should be accepted.

The panel stated that although the protections offered under section 151 of the Act are broad, they are not limitless. To ascertain whether a particular activity falls within section 151, it is necessary to first characterize the nature of the activity, and then to consider whether the activity falls within the proper scope of the protections in section 151. In this case, the panel characterized the worker's activity as involving the 'bare" filing of a claim for compensation, in the sense that there was nothing in the claim to suggest the worker intended to advise the Board of an issue related to occupational health and safety or occupational environment. The panel reviewed previous WCAT decisions, including noteworthy decisions *WCAT-2010-00781* and *WCAT-2010-02964*, and concluded that WCAT panels had consistently endorsed a distinction between compensation claims that reflect safety concerns, and claims that do not.

Applying the approach to statutory interpretation adopted in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] S.C.R. 27, and *British Columbia Hydro and Power Authority v. Workers' Compensation Board of British Columbia*, 2014 BCCA 353, the panel rejected a purely purposive interpretation and concluded that section 151 of the Act did not operate to protect a bare claim for compensation.

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The panel noted that despite consistent WCAT decisions to the contrary, the Board had issued several decisions finding that filing a compensation claim is a safety activity protected under section 151 of the Act. In particular, the panel considered and disagreed with several aspects of the analysis in *Decision Reference CD2013033*. The panel disagreed that an employer's obligation to investigate workplace accidents should result in finding an application for compensation to be a protected safety activity under section 151.

The panel also rejected the characterization of WCAT decisions as considering an element of fault to be relevant. The panel stated that, as a factual matter, a claim for compensation may communicate different kinds of information. Before deciding whether the filing of a claim reflects a safety-related activity, the exact nature of the information communicated in that claim must be evaluated. Where, as in this case, a claim simply communicates the worker's desire for compensation and the general circumstances of injury, and does not identify any safety issues, the claim may be described as a "bare" claim for compensation.

The panel recognized that this was a difficult issue on which reasonable people might reach different conclusions, but despite that difficulty, the recent WCAT approach was clear and consistent. In the interests of preserving the resources of all stakeholders, the panel urged the Board to realign its approach with that of the WCAT.

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Andrew Pendray, Vice Chair

Introduction

[1] This appeal is about whether the employer engaged in discriminatory action by firing the worker for filing a claim for compensation with the Workers' Compensation Board (Board)[1].

[2] In a December 4, 2014 decision, the Board concluded that the employer's actions amounted to discriminatory action against the worker, contrary to section 151 of the *Workers Compensation Act* (Act).

[3] The employer disagrees with the Board decision. It says it fired the worker because of poor performance and a shortage of work. The employer therefore now appeals to the Workers' Compensation Appeal Tribunal (WCAT).

[4] The employer requested an oral hearing in order to "...be in the same room with [the worker]."[2] This is not a persuasive reason to hold an oral hearing. On the contrary, item 7.5 of the WCAT's *Manual of Rules of Practice and Procedure* states that WCAT will normally conduct an appeal by written submissions where the issues are largely medical, legal, or policy based and credibility is not at issue. The issue in this appeal requires consideration of the relevant law and policy on largely undisputed facts, and we find we can decide the issue from the evidence on the Board's file and the employer's written submissions. Consequently, we find that an oral hearing is not required.

Issue(s)

[5] The issue in this appeal is whether the employer engaged in discriminatory action against the worker.

Jurisdiction

[6] Subsection 240(1) of the Act permits an appeal to the WCAT from a Board discriminatory action decision. The WCAT chair has appointed us as a three-person panel pursuant to subsection 238(5) of the Act.

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[1] operating as WorkSafeBC
[2] quotes are reproduced as written, unless otherwise indicated.

Background and Evidence

[7] By way of background, a convenient summary of the worker's circumstances is set out in a June 19, 2013 statement to the Board. The worker advised that:

- He injured his shoulder in July 2011 while he was replacing a muffler. He was holding his arms overhead when he twisted and felt his shoulder pop. He said he reported the injury to the employer's owner, but decided to "leave it" and see if it got better on its own.

- Over time, his injury became progressively worse, and he continued to inform the employer of the problem. By March 2012, he could not raise his arm above his head, and on March 9, 2012 he saw his physician.

- As a result of the physician filing an injury report with the Board, the worker received a telephone call from the Board. The worker then provided the Board with the information to start a claim.

- The worker was off work for a week. Upon his return to work, he informed the employer he had spoken with the Board and that a claim was to be opened for his shoulder injury. The employer laid him off the next day, and gave him two weeks' severance pay.

[8] Returning to the relevant documentary evidence in chronological order, we note that in a March 19, 2012 report to the Board, the employer described the worker as developing a repetitive/gradual onset injury. The employer indicated the worker had complained of a sore right shoulder injury since he started working with the employer on January 22, 2011. The worker had seen a physician on March 7, 2012, and was laid off due to shortage of work on March 14, 2012. The employer indicated it had no objection to the Board accepting the worker's claim.

[9] In a March 19, 2012 teleclaim application to the Board for compensation, the worker said he hurt his right shoulder seven or eight months earlier with a specific incident. He recalled feeling a pop in his right shoulder when working overhead pulling an exhaust. He had tried to work since then, and the symptoms sometimes went away. However, his job required him to use his arms overhead and his symptoms had worsened to the point of severe pain and "no power" in the right arm. He had notified the employer many times over the past seven or eight months, and had finally sought medical attention on March 9, 2012.

[10] A case manager spoke with the worker on November 14, 2012, and recorded his information that the employer knew he had injured his arm at work. The worker said he did not see his doctor as he did not want to lose his job. However, he also said he had tried to get the employer to put in a claim, but the employer had refused until the worker took a week off work.

[11] In a February 6, 2013 telephone memorandum on the claim file, the case manager noted the employer's statement that although the employer indicated shortage of work on the Record of Employment, the worker was "basically not working out." The employer said that the worker's performance was good when he first started but his work slowed down and he did not care as much. The employer had spoken to the worker about the length of time he spent on a brake job, and thereafter another worker told the employer the worker said he was "ticked off being questioned about the length of time and [the worker] said he would be even slower from now on." The employer specifically denied trying to suppress the worker's claim and said the decision to fire the worker was not due to the worker's shoulder claim.

[12] In his March 4, 2013 complaint of discriminatory action against the employer, the worker said he was laid off due to a workplace injury. He said the employer terminated his employment in the same week that he filed his injury claim. He added that he believed the employer wanted him out so he could not file his injury claim.

[13] A Board occupational safety officer investigated and spoke with both the worker and the employer, as summarized in a March 21, 2013 consultation record.

[14] The safety officer noted the worker had filed a claim for a workplace injury from July 2011. The worker told the Board officer he reported the injury verbally and repeatedly to the employer. Two co-workers witnessed this. The worker's pain became so great and his arm function so restricted that in February/March 2012, he had taken a week off work. He filed a claim for compensation with the Board and later that same day his boss laid him off, but said the reasons for the layoff were the worker's attitude and shortage of work. The employer then hired a new worker one month later.

[15] The safety officer noted the employer's response that the worker did not indicate a specific injury incident, and the shoulder injury was from the worker's previous employer. The employer said the worker took a 15- to 20-minute bathroom break at the start of his shift, and spent two hours on a simple brake job without completing it.

[16] According to a claim memorandum, the Board denied the worker's injury claim on the basis that there was not sufficient objective evidence to support a conclusion that the work injury occurred at or near the time alleged by the worker. However, the Board's Review Division later allowed the worker's claim.

[17] In a letter received at the Board on September 11, 2013, the worker wrote that he did not inform the employer of safety concerns. He said he found out after the fact that the employer had certain safety duties that they did not perform.

Submissions

[18] The employer has filed extensive submissions. We do not intend to repeat them other than to say that, in essence, the employer disagrees that it fired the worker for filing a claim of compensation with the Board. In any event, the employer argues that the filing of a claim for compensation is not a safety activity protected under section 151 of the Act. The employer therefore concludes it could not have engaged in discriminatory action against the worker and asks that we allow its appeal and deny the worker's complaint of discriminatory action.

[19] Although the worker was invited to participate, he did not file any submissions.

Reasons and Findings

[20] The Act provides protection for workers who suffer negative employment consequences because of engaging in certain protected safety activities. The question in this case is whether the worker's filing of a compensation claim is a protected safety activity such that he falls within the protection of the Act.

[21] In this regard, section 151, which is set out in Part 3 of the Act[3], describes the scope of such protection:

> **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
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> (a) for exercising any right or carrying out any duty in accordance with this Part, the regulations or an applicable order,
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> (b) for the reason that the worker has testified or is about to testify in any matter, inquiry or proceeding under this Act or the *Coroners Act* on an issue related to occupational health and safety or occupational environment, or
>
> (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

[3] The Act is broken down into 4 Parts. Part 3 is entitled "Occupational Health and Safety".

(iii) an officer or any other person concerned with the administration of this Part.

[22] It is apparent that the protections offered under section 151 of the Act are broad; however, they are not limitless. To ascertain whether a particular activity falls within section 151 of the Act, it is necessary to first characterize the nature of the activity. Having characterized the activity in question, it is then necessary to consider whether the activity falls within the proper scope of the protections set out in section 151 of the Act.

[23] Here, we characterize the nature of the activity in question as involving the "bare" filing of a claim for compensation. We say "bare" because there is nothing in the claim to suggest that the worker intended to advise the Board of "an issue related to occupational health and safety or occupational environment". His intent was to claim compensation. Indeed, the worker specifically says he did not raise safety issues before he lost his job. Further, although he reported impairment to his employer over several months, he does not say he lost his employment for this reason. Instead, he frames his complaint of discriminatory action as arising from being fired simply because he filed a claim for compensation with the Board. We therefore find the activity in question is properly characterized as the "bare" filing of an application for compensation.

[24] The WCAT has endorsed, in several decisions (such as a "Noteworthy" Decisions *WCAT-2010-00781* and *WCAT-2010-02964*[4]), the notion of distinguishing between compensation claims that reflect safety concerns, and claims that do not and are instead simply requests for compensation. We continue to be of the view that this is a valid distinction and one that applies here. Although clearly objectionable, the reality is that some employers are motivated by fear of increased assessments, or loss of corporate incentive programs for low claim rates, to suppress claims. Such motivation has no connection with workplace safety under Part 3 of the Act.

[25] Having characterized the activity in question here as involving the "bare" filing of a claim for compensation, the next question is whether such activity engages section 151 of the Act. We find it does not. We set out our reasons in this regard in more detail below.

a. Principles of statutory interpretation

[26] The question of whether the "bare" filing of a complaint is a protected activity under section 151 of the Act involves statutory interpretation.

[4] See also, *WCAT-2015-03134*, *WCAT-2015-01169*, *WCAT-2014-02765*, *WCAT-2014-02708*, *WCAT-2014-02676, WCAT-2013-02492, WCAT-2013-01399, WCAT-2012-01877, WCAT-2012-01300, WCAT-2011-00914, WCAT-2010-03434, and WCAT-2010-03136.*

[27] A convenient starting point for interpreting the meaning of section 151 of the Act and whether it captures a worker's bare filing of a claim for compensation is the approach set out in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27:

> 21 Although much has been written about the interpretation of legislation…. 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….

[28] The same approach is required in the particular context of occupational health and safety matters under the Act. Indeed, in *British Columbia Hydro and Power Authority v. Workers' Compensation Board of British Columbia*, 2014 BCCA 353, Neilson J.A. held:

> [45] ....Where the legal issue under examination is one of statutory interpretation, the common objective of both administrative decision makers and courts must be to ascertain the intent of the legislature by applying the "modern principle" of statutory interpretation. This requires an examination of the words of the provision under consideration according to their grammatical and ordinary sense, in their entire context, and in harmony with the scheme and object of the Act. The fact that the choice between reasonable interpretations falls to the administrative decision maker does not absolve it from following this cardinal principle: *Canada (Canadian Human Rights Commission) v. Canada (Attorney General*), 2011 SCC 53 at para. 33; *McLean* at paras. 38-42.
>
> [46] Here, it was incumbent on the Review Officer to not only consider the legislative purpose of s. 172(1)(a), but to also examine its scope in the context of other relevant statutory provisions, and search for an interpretation that was harmonious with these, as well as with the scheme and object of the Act. The chambers judge properly found this exercise should have included consideration of the provisions of Division 3 of Part 3 of the Act.

[29] We note in particular the direction from the Court of Appeal in *BC Hydro* that a purely purposive approach to statutory interpretation is wrong. Rather, purpose is but one factor to consider when interpreting the Act, including matters involving occupational health and safety. This is so even though section 8 of the *Interpretation Act* states that every enactment must be construed as being remedial, and must be given such fair,

large and liberal construction and interpretation as best ensures the attainment of its objects.

[30] With this guidance in mind, we turn to consider whether any of the provisions set out in section 151 of the Act protect a worker when he or she files a bare claim for compensation with the Board. It is only subsections 151(a) and (c) that might apply here. We address each in turn.

i. Subsection 151(a)

[31] This provision protects workers from negative workplace consequences:

> (a) for exercising any right or carrying out any duty **in accordance with this Part**, the regulations or an applicable order,
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> [our emphasis]

[32] With respect to the ordinary and grammatical meaning of this provision, we conclude it does not protect a worker who files a bare claim for compensation with the Board. We do so because of the phrase "in accordance with this part" – that is, Part 3 of the Act. A worker's right to file a claim for compensation, and the duties as to how and when such a claim must be filed, is found in Part 1 of the Act[5]. The filing of a claim is therefore not a right or duty carried out in accordance with "this part" within the meaning of subsection 151(a) of the Act. The ordinary and grammatical sense of subsection 151(a) therefore weighs against capturing a "bare" application for compensation.

[33] With respect to context of section 151, we note that Part 3 already includes a prohibition against claim suppression by employers (section 177 of the Act). Because the Legislature has already specifically addressed, in clear language, this issue in section 177, it is unlikely as a contextual matter that it intended to repeat itself, in unclear language, in subsection 151(a). Similarly, because the Board already set out the right and duty to file a claim for compensation in Part 1 of the Act, we doubt it intended to re-create that same right and duty in section 177 of the Act.

[34] On another contextual note, we point out that in other areas of the Act the Legislature has differentiated between "this part" and "the Act" on several occasions. We take from this context that the Legislature used "this Part" in section 151 deliberately and with the specific goal of capturing safety activity only under Part 3.

[35] A final contextual point is that we see nothing in the legislative debates dealing with Part 3 of the Act to suggest that the discriminatory action provisions were intended to apply to the bare filing of a claim for compensation. Similarly, from our research into other

[5] Part 1 of the Act is entitled "Compensation to Workers and Dependents" and it is sections 53 and 55 that relate to worker's filing claims for compensation.

Canadian jurisdictions, we understand that no such protection is available in those jurisdictions. Therefore, we consider that the context of section 151 weighs against a conclusion that subsection 151(a) was intended to apply to a "bare" claim for compensation.

[36] With respect to purposes, we note that section 107 of the Act describes the Legislature's intent to promote worker health and safety. We agree that this purpose favours interpreting subsection 151(a) in a manner that would protect workers who file bare applications for compensation. However, purpose is but one factor in the statutory interpretation exercise.

[37] Weighing the grammatical and ordinary sense, the context of Part 3, and the purposes of that part, we conclude that subsection 151(a) is not intended to apply to a bare claim for compensation because it only protects safety activities carried out pursuant to Part 3 of the Act.[6] Were we to conclude otherwise, we would be overemphasizing purpose at the expense of context and ordinary meaning, contrary to *BC Hydro*.

ii. Subsection 151(c)

[38] The second area that might provide protection to workers who file bare claims for compensation is found in subsection 151(c) of the Act. That provision protects workers who suffer negative employment consequences:

> (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
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> (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.

[39] In our view, the bare filing of a claim for compensation is made to the Board, not to an employer, another worker, or a union. This means that paragraphs 151(c)(i) and (ii) are not engaged. With respect to paragraph 151(c)(iii), assuming that the application for compensation does not reveal some obvious workplace safety concern, which is the essence of characterizing the application as a "bare" claim for compensation, we fail to see how the claim would reflect a report about the occupational safety of the worker to the Board.

[6] This is the same conclusion as the panel reached in *WCAT-2010-02964*, a "noteworthy" decision on this point at paragraphs 31 to 37, with which we agree.

[40] In any event, the reporting in question must be to "an officer…concerned with the administration of this Part", whereas 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 subsection 151(a), we conclude that the specific reference in paragraph 151(c)(iii) to "the administration of this Part" was intended to exclude matters under other parts of the Act, such as claims for compensation under Part 1. 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.

[41] In summary, we find that the bare filing of a claim for compensation is not an activity protected under either subsection 151(a) or (c) of the Act. As this was the basis of the worker's complaint, it cannot succeed and we must allow the employer's appeal.

b. The Board's view

[42] Before leaving this appeal we note that, despite consistent WCAT decisions to the contrary, the Board has issued several decisions finding that filing a compensation claim is a safety activity protected under section 151 of the Act.

[43] In our view, the Board's approach puts employers to the unnecessary time and expense of pursuing an appeal to the WCAT. The Board's approach also wastes the time of a worker who may succeed before the Board only to have that outcome inevitably overturned on appeal. Again, this is not an issue on which there are divergent views at the WCAT so that the Board must select from amongst them. On the contrary, the WCAT has held on many occasions, without dissent, that the bare filing of a compensation claim is not a protected safety activity under section 151 of the Act.

[44] In such circumstances, and regardless of the Board's disagreement with the WCAT's position, we would suggest that the Board consider changing its approach so as not to waste the time and resources of the stakeholder community.

[45] In addition to the systemic concerns associated with the Board's approach, we note in any event that we disagree with a number of aspects of the Board's analysis[7] on this issue.

[46] First, the Board appears to relate the need for an employer to investigate workplace accidents, found in sections 173 and 174 of the Act, to the need for protecting the filing of a claim for compensation. This view appears to suffer from the purely purposive approach to statutory interpretation that our Court of Appeal specifically discarded in *BC Hydro*. Further, there is nothing in section 173 or 174 that relates to section 151 or depends on the filing of a claim. Indeed, section 173 is engaged even if a worker does not file a claim. We therefore disagree that an employer's obligation to investigate

[7] As primarily set out in *Decision Reference CD2013033*

workplace accidents should result in finding an application for compensation to be a protected safety activity under section 151 of the Act.

[47] Second, the Board appears to mischaracterize and misunderstand what the WCAT means when referencing the notion of a "bare" filing of a claim for compensation. The Board seems to suggest that WCAT decisions consider some element of fault to be relevant. It simply is not. Nowhere is such a concept referenced in the WCAT decisions.

[48] Rather, the concept of a "bare" claim recognizes that, as a factual matter, a claim for compensation may communicate different kinds of information. Before deciding whether the filing of a claim reflects a safety-related activity, the exact nature of the information communicated in that claim must be evaluated. In many cases, as with this one, a claim will simply communicate the worker's desire for compensation and the circumstances, usually at a very general level, of his or her injury. The worker will not identify any obvious safety issues and nor would the employer reasonably think that the worker had done so. The resulting claim therefore has insufficient linkage with safety or Part 3 of the Act and may therefore be described as a "bare" claim for compensation.

[49] That is what is meant by a "bare" claim for compensation. It may not be an easy task in every case to distinguish at what point a claim for compensation reveals enough of a safety dimension to be more than a mere "bare" claim; however, that difficulty must be assessed on a case-by-case basis rather than simply taking a blanket approach that all claims for compensation reveal safety concerns. The Board may believe that every claim for compensation reflects a report by a worker of significant safety concerns; however, we do not. Indeed, such a view would lead to the unworkable result that the Board should be investigating every such claim for safety violations and issuing contravention orders.

[50] Again, the point of the "bare" claim distinction is that adjudicators must evaluate the circumstances and language found in the claim and the information conveyed. In some cases, those circumstances may be sufficient to demonstrate as a factual matter that the worker's claim raised safety issues sufficient to come within the protection of section 151 of the Act; however, in many it will not.

[51] For example, a worker who accidently hits his hand with a hammer while hammering in a nail cannot reasonably be said to be raising workplace safety concerns. On the other hand, a worker who, in his application for compensation, describes falling off a roof without fall protection might well be raising safety concerns. Overall, it seems to us that the Board's misunderstanding of how the WCAT views the notion of a bare claim undermines the Board's critique of that notion.

[52] Third, the Board suggests that a worker's filing a claim for compensation to the employer, at any time, has the potential to engage the discriminatory action provisions

because it is the same as a report of "impairment".[8] It is true that reporting impairment to an employer is a protected safety activity; however, that is not usually what a claim for compensation is about. Again, the purpose of filing a claim is generally for the worker to secure compensation, not to inform an employer that it would be creating an unsafe situation for the worker to continue to undertake their assigned work. Further, the claim is made to the Board not the employer. We therefore disagree that the bare filing of a claim for compensation is an exercise of a worker's duty under section 4.19 of the *Occupational Health and Safety Regulation*.

[53] Indeed, as already mentioned, we disagree with the Board's interpretation of paragraph 151(c)(iii) of the Act. The Board seems to say that a claim for compensation to an officer under Part 1 is the same as raising a safety concern with an officer responsible for administering Part 3. The Board's interpretation in this regard, again, is simply inconsistent with *BC Hydro* and disregards the distinction, set out in the Act, between Board functions. The Board's interpretation is driven by purpose at the expense of context and ordinary grammatical language. We therefore disagree with the Board that officers under paragraph 151(c)(iii) are the same officers as those with whom a worker files a claim for compensation.

[54] Finally, we disagree with the Board's view that section 55 of the Act "Application for Compensation" simply sets out the process by which a worker may file a claim and therefore does not confer on workers a specific right to claim compensation. When read as a whole, it is only Part 1 of the Act that confers on workers a right to compensation in specific situations (commencing with section 5, amongst others), that prevents a worker's right to compensation from being waived, assigned, or attached (sections 13 and 14), and that mandates the manner by which a worker is to make a claim for compensation (section 55).

[55] In short, Part 1 of the Act gives workers a right to compensation, and directs them as to the manner by which they must claim that compensation. Surely, the right to file a claim is therefore found in Part 1 of the Act. In our view, to conclude that a worker's right to file or make a claim for compensation (in the manner specifically proscribed in section 55) is not derived from Part 1 of the Act, is to ignore the entire intention of that Part of the Act, which is to provide "Compensation to Workers and Dependents".

[56] Consequently, we disagree with significant aspects of the Board's analysis of this issue; however, we recognize that this is a difficult issue and one about which reasonable people may reach different conclusions. Indeed, for some years it was the Board that considered filing a claim for compensation was not a protected safety activity. Despite the difficulty inherent in this issue, the recent WCAT approach is clear and consistent and we continue to apply it here. More broadly, it seems to us that, in the interests of

[8] By way of section 4.19 of the *Occupational Health and Safety Regulation*, B.C. Reg. 296/97, which requires a worker to report impairment that may affect that worker's ability to safely perform assigned work to his or her employer.

preserving the resources of all stakeholders, it is now time for the Board to realign its approach with that of the WCAT.

[57] In summary, it will be necessary in each case to evaluate the circumstances and language found in each claim to determine whether the claim demonstrates as a factual matter that it also raises safety issues sufficient to come within the protection of section 151 of the Act. In many cases, as here, the compensation claim will not reveal any significant occupational health and safety dimension. It will therefore be no more than a "bare" claim for compensation and thus outside the scope of the protection the Legislature intended to confer on workers by way of section 151 of the Act.

Conclusion

[58] We vary the Board's decision and find that the employer did not engage in discriminatory action against the worker. We reach this conclusion because the bare filing of a compensation claim, as in this case, is not a safety activity protected under section 151 of the Act and the worker has therefore not established a *prima facie* case of discriminatory action.

[59] The employer did not request reimbursement for appeal expenses and none are apparent to us. We therefore make no order in this regard.

Joanne Kembel
Vice Chair

Warren Hoole
Vice Chair

Andrew Pendray
Vice Chair

JK/ml