

Brown Bros. Motor Lease Canada Ltd. v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Court of Appeal
Citation	2022 BCCA 20
Result	Confirms Dismissal of Judicial Review
Judges	MacKenzie, Fenlon, and Grauer
Date of Judgement	20 January 2022
WCAT Decision Reviewed	A1603743

Keywords:

Judicial review - Section 311 determination - Whether a person is a “worker” under the Workers Compensation Act - Procedure for determining constitutional applicability of the Workers Compensation Act - Policy AP1-4-of the Assessment Manual

Crew members of an American airline were in BC for overnight layover in 2010. While being driven back to the airport, they were involved in a two-vehicle collision. The other driver was acting within his employment at the time, and in the litigation that ensued, he raised section 10 (now section 127) as a bar to the lawsuit. Both the plaintiffs and defendants applied to WCAT for determinations of several issues, including whether or not each of the plaintiff crew members were “workers” within the meaning of Part 1 (now Part 3) the Act, and whether or their injuries arose out of and in the course of employment within the scope of Part 1 (Part 3). These determinations entailed interpretation of Assessment Policy AP1-2-1 (now AP1-4-1), “Exemptions from coverage.”

WCAT answered “no” on all counts. On review the Supreme Court declined to intervene, and the Defendants filed an appeal.

The Court of Appeal noted that there is a two-step process for determining whether a tribunal’s enabling statute applies to a case before it. Firstly, the panel determines whether the statute applies on the facts of the case. Only if this question is answered in the affirmative, should the decision-maker go on to consider whether the statute applies as a matter of constitutional law. On judicial review, the first step is subject to the patent unreasonableness standard; the second is subject to the standard of correctness.

The Court of Appeal found that the panel in the present case addressed only the first question, and had done so in a fashion which was not patently unreasonable. Accordingly, the appeal was dismissed.