

Campbell v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	BC Court of Appeal
Citation	2023 BCCA 245
Result	Appeal dismissed
Judge	Skolrood, Butler, and Abrioux JJA
Date of Judgment	June 13, 2023
WCAT Decision Reviewed	A1606676

Keywords:

Appeal – Certification to court – Procedural fairness – Right to be heard – Analyzing reasons - Alternative findings

Summary:

A forestry worker was driving home when his pick-up truck collided with a logging truck. He filed a lawsuit against the driver and the owner of the logging truck, along with the road maintenance company. The Defendants raised section 10 of the *Workers Compensation Act* [now section 127] as a bar to the Plaintiff's claim. The road maintenance company applied to WCAT for determinations under section 257 [now 311] that the Plaintiff was a worker within the meaning of the Act, and that his injuries arose out of and in the course of his employment. The company also sought a determination concerning their status as an employer. The Defendant driver and vehicle owner made submissions these issues and also their own statuses under the Act. The Plaintiff made submissions concerning his status and whether the injuries out of and in the course of his employment. Among other things, he argued that there was circumstantial and medical evidence to show that prior to the accident he had consumed cannabis and alcohol, and that this indicated that his injuries did not arise out of and in the course of his employment. The Plaintiff did not comment on the statuses of the Defendants.

The WCAT Panel determined that each of the parties was either a worker or employer under the Act, and that the injuries arose out of and in the course of the Plaintiff's employment.

On judicial review, the Plaintiff asserted that the Panel should not have determined the statuses of the logging truck driver and the owner because they had not filed a separate application in the prescribed form, and because Plaintiff's counsel was effectively denied the opportunity to respond on these issues. However, the Court noted that the version of WCAT's *Manual of Rules of Practice and Procedure* ("MRPP") then in effect did not require use of the application form [it does now], and held that while Plaintiff's counsel had not received formal notice, they had sufficient notice and opportunity to make submissions on these issues.

The Plaintiff noted that the Panel's decision referred to a white paper on cannabis, which she had discovered through her own research, but had not disclosed to the parties. In particular, the paper noted that testing positive for cannabis does not necessarily mean impairment. While

section 246 of the Act [now 297] permits a panel undertake such research, the parties should be given the opportunity to make submissions on it, in accordance with accords with the principles of procedural fairness, and Items 1.5.3.1 and 9.3.2 of the *MRPP*. Nevertheless, the Court noted that held that there had been no unfairness to the Plaintiff since his submissions to WCAT alleged that he was not impaired at the time of the accident.

On appeal, the Plaintiff alleged two grounds.

Firstly, he asserted that the judge had effectively placed an onus on the Plaintiff to seek leave from WCAT to respond to the submissions of the driver and vehicle owner concerning their own statuses. He further asserted that it was a breach of procedural fairness for WCAT to determine these issues without inviting a response from him.

However, the Court of Appeal found that the chambers judge had merely observed that if the Plaintiff had genuinely intended to challenge the statuses of driver and vehicle owner, he could have done so at any time during the three months between the date that he received their submissions and the date of the WCAT decision. The chambers judge also noted that the statuses of the Defendants had been raised the pleadings in the personal injury action, and the examinations for discovery had focused primarily on the issue of status under the Act. The Court of Appeal agreed with these findings, and found that the absence of submissions by the Plaintiff on these points was not due to being denied the opportunity to be heard.

Secondly, the Plaintiff asserted that the white paper was vital to a central issue, and that the failure to invite a response from him amounted to a violation of the rules of natural justice.

However, the Court of Appeal found that the white paper had no bearing on the key questions of whether the Plaintiff had taken a break before the accident that amounted to a substantial deviation from his employment. It merely noted that the presence of THC in the blood does not necessarily indicate impairment. Thus, the white paper simply reinforced the Plaintiff's own position that impairment was not a causative factor in the accident. The Court noted with approval the chambers judge's characterization of the Plaintiff's position as "walking a very fine line" between arguing that there was a significant deviation from employment because of alcohol and drug use and denying that such contributed to the accident.

The Court of Appeal also noted that the WCAT panel made alternative findings of fact. Even if the Plaintiff had taken a break, the panel held that this did not amount to a substantial deviation from the course of his employment, and in any event the employment connection was reestablished once he recommenced his drive home. As the white paper was not relevant to these findings, the Court held that the failure to provide the Plaintiff the opportunity to make submissions did not render the proceeding unfair.

In view of this conclusion, the Court considered it unnecessary to consider the Plaintiff's argument, based on *Cardinal v Director of Kent Institution*, [1985] 2 SCR 643, that the judge erred by speculating about the potential impact of the alleged breach of procedural fairness when he asked Plaintiff's counsel what submission they would have made on the white paper had they been invited to do so.