

Maung v Workers' Compensation Appeal Tribunal

Decision Summary

Court	BC Supreme Court
Citation	2022 BCSC 1558
Result	Petition Dismissed
Judge	Mr. Justice Brongers
Date of Judgment	13 July 2022
WCAT Decision Reviewed	A2100559

Keywords:

Prohibited action complaint - standard of proof - relevance of video and documentary evidence - unsubstantiated allegations of bias

Summary:

The Petitioner was employed as a banquet server when he was assaulted by his supervisor, who grabbed him by his shirt and shoved him about a meter. The employer disciplined the supervisor, but the Petitioner was dissatisfied with the employer's response. He continued to press the issue, and circulated emails that the employer considered to be inappropriate. The Petitioner also informed management, for the first time, that he had previously witnessed the supervisor commit a theft of food from the employer. The employer issued a written warning to the Petitioner citing him for failing to report the theft, and for sending inappropriate emails. The Petitioner refused to sign a written acknowledgment of the warning, and continued to press and escalate his complaints despite being advised by the general manager that they considered the matter closed. Finally, the Employer fired him.

The Petitioner filed a prohibited action complaint. The Board adjudicator found that a *prima facie* case had been made, but also found that the employer had rebutted this case on the civil standard of proof.

On appeal to WCAT, the Petitioner was self-represented. Prior to the hearing date, he submitted several email threads as evidence. However, the Vice Chair decided on a preliminary basis that these were not relevant, and refrained from disclosing them to the employer. The Petitioner also requested that the employer be required to produce security camera footage which would show the assault and two meetings between him and management. The Vice Chair declined to make such an order as neither the incident nor the meetings disputed. The Petitioner also objected to the one hour time slot for hearing as he believed that this would not be enough time.

At the hearing the Petitioner addressed the evidentiary and procedural issues again, and the Vice Chair confirmed his decisions. The Petitioner also stated that due to a power outage, he had been unable to review some documentation. When asked if he wanted an adjournment, however, he equivocated, so the Vice Chair decided to proceed and allow written submissions post hearing. The Vice Chair did not hold the parties to the one hour time slot, and the hearing took about 1.5 hours.

On judicial review, the Petitioner raised the issues noted above, and also alleged that the panel was biased. He also asserted that the panel was wrong to apply the civil standard of proof, but did not specify what he thought the correct standard would be.

In dismissing the Petition, the Court dealt with the issues as follows:

- Video evidence: as this was not probative to the disputed matters, there was no procedural unfairness in declining to order its production
- Email threads: as these lacked relevance, there was no procedural unfairness in not providing them to the employer.
- Hearing length: there was no procedural unfairness because the Petitioner could not point to any impingement on his ability to provide evidence or submission either orally or in writing
- Adjournment: the Petitioner did not plainly request an adjournment when prompted by the Vice Chair
- Bias: as there was no substantiation for this, the Petitioner should not have made this allegation.
- Standard of proof: there was no basis to the Petitioner's argument that a standard of proof other than the civil standard should have been applied.