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CASE SUMMARY: BC COURT OF APPEAL AFFIRMS WCAT DECISION THAT ACCIDENT ON THE WAY TO EMPLOYMENT RELATED RETREAT "DID NOT ARISE OUT OF AND IN THE COURSE OF THEIR EMPLOYMENT"

Administrative law – Decisions of administrative tribunals – Workers Compensation Boards – Judicial review – Appeals – Standard of review – Patent unreasonableness – Evidence; Workers compensation – Policies – In and out of the course of employment

Northern Thunderbird Air Inc. v. British Columbia (Workers' Compensation Appeal Tribunal)

Appellate court affirms Tribunal's decision that injuries caused to members of a CEO advisory group did not arise out of and in the course of their employment.

[2017] B.C.J. No. 300

2017 BCCA 60

British Columbia Court of Appeal

February 1, 2017

R.J. Bauman C.J.B.C., P.M. Willcock and G.J. Fitch JJ.A.

The petitioner, Northern Thunderbird Air Inc. ("Northern Thunderbird"), appealed the decision from the BC Supreme Court dismissing the petition brought by Northern Thunderbird for an order pursuant to the Judicial Review Procedure Act setting aside the decision of the Worker's Compensation Appeal Tribunal ("WCAT"). The respondents, members of the CEO advisory group of the The Executive Committee (TEC), were injured in an airplane accident at Vancouver International Airport on October 27, 2011. The respondents were flying to Kelowna, BC, to participate in a retreat sponsored by TEC. Following the accident, Northern Thunderbird brought an application to WCAT for a determination as to whether the respondent's injuries arose out of and in the course of employment.

On February 18, 2015, WCAT issued a decision finding that the respondent's injuries did not arise out of and in the course of their employment. WCAT compared its policies set out in the WorkSafeBC Rehabilitation Services and Claims Manual, Volume II, to the written evidence it received. Although the evidence was mixed, WCAT found that the respondent's activities with TEC was best characterized as "for the [respondents'] own benefit in enhancing their general knowledge, and skills in relation to their functioning as CEOs". In assessing its policies, WCAT was satisfied that compensation coverage does not generally extend to injuries or deaths that occur during educational or training courses. Accordingly, WCAT concluded the respondent's participation in TEC was not sufficiently connected to their employment.

On judicial review, the parties agreed that the standard of review was patent unreasonableness. In her reasons, the chambers judge found that the WCAT decision, read as a whole, demonstrated a careful consideration and weighing of the evidence; and application of the applicable statutory provisions and policies to the facts as found.

At the Court of Appeal, the appellant argued that the WCAT decision, in finding that the respondents' participation in TEC was not part of their normal work activities, was inconsistent with evidence that the respondents' participation in TEC included discussing work, receiving input and direction on business issues and strategic thinking. The Court of Appeal concluded that WCAT clearly set out the evidence it relied on when considering whether the respondents participate in TEC to enhance their abilities as CEOs. In the result, the Court of Appeal held that the decision was not patently unreasonable and dismissed the appeal.

This case was digested by Jackson C. Doyle of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact him directly at jdoyle@harpergrey.com or review his biography at http://www.harpergrey.com.