NO. M102149
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

TERRY ROBINSON

PLAINTIFF

AND:

DAVID NOYES and PRICE'S TRUCKING LTD.

DEFENDANTS

CERTIFICATE

UPON APPLICATION of the Defendants, DAVID NOYES and PRICE'S TRUCKING LTD., in this action for a determination pursuant to section 257 of the *Workers Compensation Act*;

AND UPON NOTICE having been given to the parties to this action and other interested persons of the matters relevant to this action and within the jurisdiction of the Workers' Compensation Appeal Tribunal;

AND AFTER an opportunity having been provided to all parties and other interested persons to submit evidence and argument;

AND UPON READING the pleadings in this action, and the submissions and material filed by the parties;

AND HAVING CONSIDERED the evidence and submissions;

THE WORKERS' COMPENSATION APPEAL TRIBUNAL DETERMINES THAT at the time the cause of action arose, April 2, 2009:

1. The Plaintiff, TERRY ROBINSON, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. The injuries suffered by the Plaintiff, TERRY ROBINSON, did not arise out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act*.

CERTIFIED this 17th day of July, 2012.

H. Morton

Herb Morton
Vice Chair

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SECTION 257 CERTIFICATE

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WCAT Decision Number: **WCAT-2012-01880**
WCAT Decision Date: **July 17, 2012**

Panel: Herb Morton, Vice Chair

WCAT Reference Number: 111368-A

Section 257 Determination
In the Supreme Court of British Columbia
Vancouver Registry No. M102149
Terry Robinson v. David Noyes and Price's Trucking Ltd.

Applicants: David Noyes and Price's Trucking Ltd.
(the "defendants")

Respondent: Terry Robinson
(the "plaintiff")

Interested Persons: Nigel Lutz

Price's Trucking Ltd. and David W. Noyes

Representatives:

For Applicants: Tim P. Kushneryk
STEWART & COMPANY

For Respondent: Eric Goodman
MUSSIO LAW GROUP

For Interested Persons:

Nigel Lutz: Anu K. Khanna
KHANNA & CO.

Price's Trucking Ltd. and David W. Noyes: Rebecca von Rüti
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Section 257 Determination
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Vancouver Registry No. M102149
Terry Robinson v. David Noyes and Price's Trucking Ltd.

Introduction

[1] The plaintiff, Terry Robinson, is a sales representative for Prostock Athletic Supply Ltd. (Prostock). He was injured in a motor vehicle accident at approximately 11:45 a.m. on April 2, 2009, while driving to North Vancouver to have lunch. The accident occurred on Highway No. 1 near the Boundary on-ramp. The plaintiff was going to have lunch with Dave Williams, who was president of the Tsawwassen Amateur Baseball League.

[2] Police on motorbikes came onto Highway No. 1 to stop the traffic for a motorcade. The defendant, David Noyes, was employed by the defendant Price's Trucking Ltd. He was driving a semi truck, and was unable to stop in time due to carrying a heavy load. His truck struck the rear of the plaintiff's vehicle, pushing it into the rear of a vehicle being driven by Nigel Lutz. Noyes was on his way to Westcoast Reduction to drop off a load. He was making two trips a day from Mount Vernon to Vancouver.

[3] Pursuant to section 257 of the *Workers Compensation Act* (Act), the Workers' Compensation Appeal Tribunal (WCAT) may be asked by a party or the court to make determinations and certify to the court concerning actions based on a disability caused by occupational disease, a personal injury, or death. This application was initiated by counsel for the defendants on June 9, 2011. A transcript has been provided of the examination for discovery of the plaintiff on February 20, 2012. The legal action is scheduled for trial commencing on October 23, 2012.

[4] A related legal action has been brought in *Nigel Lutz v. Price's Trucking Ltd., David W. Noyes, Terry Robinson and Vancouver Police Department*, B.C.S.C. Vancouver Registry No. M111391. This related action was discontinued against the defendant Terry Robinson, and is not being pursued against the Vancouver Police Department. The other parties to the related legal action did not provide submissions although invited to do so.

[5] Written submissions have been provided by the parties to the legal action. Prostock is not participating in this application, although invited to do so. I find that this application involves questions of mixed fact, law, and policy which can be properly considered on the basis of the written evidence and submissions without an oral hearing.

Issue(s)

[6] Determinations are requested concerning the status of the parties to the legal action, at the time of the April 2, 2009 motor vehicle accident.

Jurisdiction

[7] Part 4 of the Act applies to proceedings under section 257, except that no time frame applies to the making of the WCAT decision (section 257(3)). WCAT is not bound by legal precedent (section 250(1)). WCAT must make its decision based on the merits and justice of the case, but in so doing must apply a published policy of the board of directors of the Workers' Compensation Board, operating as WorkSafeBC (Board), that is applicable (section 250(2)). Section 254(c) provides that WCAT has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined under Part 4 of the Act, including all matters that WCAT is requested to determine under section 257. The WCAT decision is final and conclusive and is not open to question or review in any court (section 255(1)). The court determines the effect of the certificate on the legal action: *Clapp v. Macro Industries Inc.*, 2007 BCSC 840.

Status of the plaintiff, Terry Robinson

[8] The plaintiff did not submit an application for workers' compensation benefits for injuries sustained in the April 2, 2009 motor vehicle accident. He provided a signed statement on April 8, 2009, in which he advised:

> At around 11:45 am Thursday morning, I was driving westbound on Highway No. 1 in the left lane, just before the Boundary on-ramp. Suddenly out of nowhere came 3 or 4 police on motorbikes that cut across the two lanes of traffic and stopped vehicles in their tracks, including the vehicle in front of me. I was able to stop in time to avoid colliding with the vehicle in front of me. There was approximately 10 feet separating us. I then looked in my rear view mirror to see an 18 wheel semi truck braking hard to try and avoid me with no luck. He smashed into the back of my car and drove me into the car in front of me.

[9] The plaintiff gave evidence at an examination for discovery on February 20, 2012. He was employed by Prostock as a team sales representative (Q 13 to 16). He had been employed by Prostock for 22 years prior to the accident (Q 17). His work involved calling on high schools to meet with an athletic director to discuss their needs for

purchasing athletic clothing equipment (Q 19 to 20). The plaintiff's office with Prostock was located at Juneau Street and Willingdon Avenue in Burnaby (Q 21 to 23).

[10] I find that the plaintiff was a worker within the meaning of Part 1 of the Act, based on his employment by Prostock. At issue is whether his injuries in the April 2, 2009 motor vehicle accident arose out of and in the course of his employment.

[11] The plaintiff normally began his workday by going to his office (Q 24). His work frequently involved leaving the office to meet with a client (Q 28). This would occur on most days (Q 31). He received a car allowance of just over $400.00 a month from Prostock (Q 36).

[12] On the morning of the accident, he was at work in his office. He normally arrived at the office at 6:00 a.m. (Q 39 to 40). He described his day as follows (Q 41):

> Well, just more or less just doing e-mails and faxes the first thing in the morning, just to prepare my day. And then at the time of the accident I was off to meet a buddy for lunch for a break, and then was anticipating coming back to the office afterward.

[13] He did not leave the office during the morning of April 2, 2009, prior to going for lunch (Q 42).

[14] He was meeting Dave Williams for lunch (Q 57). He had known Williams since childhood (Q 58). He had also done business with Williams (Q 59). Williams was president of Tsawwassen Amateur Baseball (Q 60). Williams had arranged for his organization to purchase athletic equipment or clothing from Prostock on prior occasions (Q 61). This had occurred most recently during the week prior to the accident (Q 62 to 63). The plaintiff advised (Q 64):

> ...I can't recall, you know, exactly what they would have ordered that week, but during this time of year they've got all kinds of different requests, whether it be baseball hats, baseballs, uniforms, bases, bats. Anything pertaining to baseball related items is what they could have purchased.

[15] At question 69, the plaintiff stated:

> Q So sir, although Mr. Williams was a lifelong friend of yours, was it at all possible that during the course of your lunch with him there might have been some discussion regarding his either prior purchases or his upcoming purchases?
> A Maybe.

[16] No one else was going to be at the lunch (Q 70). The plaintiff carried samples of product in his car every day (Q 72). He did not recall if any of those samples in his car on the day of the accident would have been baseball related (Q 73). After the accident, the plaintiff telephoned Williams to cancel the lunch meeting (Q 243).

[17] Williams was working in construction at a house near Capilano Road (Q 244). They were going to go for lunch at a little strip mall in the Capilano Road area (Q 245).

[18] The plaintiff confirmed that it was his practice to have lunch meetings with clients (Q 250 to 251, 256 to 257). With reference to his planned lunch meeting on the day of the accident, he stated (Q 252 to 253):

> Q On occasion at those lunches you would discuss business, correct?
> A Perhaps.
> Q Why do you perhaps? Is it –
> A Well, in Dave's case, he's a friend of mine, so I wasn't going up there with a specific intention to talk business.
> Q No. But –
> A I was just going for lunch.

[19] The plaintiff further stated (Q 263):

> Q Are you able to say today that you had a clear intention to avoid discussing business with Dave at that lunch?
> A That I can't answer.

[20] The plaintiff provided an affidavit sworn on April 27, 2012. He stated that at the time of the accident, he was on his way to have lunch with Dave Williams, his close friend of 33 years. Since Williams lived in Delta, having lunch with him during the week typically was not possible. They planned to have lunch on April 2, 2009 as Williams was working as a contractor on a house in North Vancouver (a 15-minute drive from the plaintiff's office). The plaintiff advised that he regularly socialized with Williams on evenings and weekends, without discussing business. He stated (at paragraphs 9 to 12):

> Although I had, and continue to do business with Dave, the purpose of our lunch was not business related.
>
> I had no intention of discussing former or future business transactions, or any business in general. This was to be lunch among friends.
>
> I never viewed lunch or any other social gathering with Dave as client development, as we have been friends since childhood. I never considered it a possibility that Dave would take his occasional business elsewhere.

> I did not intend to pay for Dave's lunch, and did not intend to submit a receipt with respect to my lunch with Dave on the day of the Accident.
>
> [paragraph numbering removed]

[21] Dave Williams provided an affidavit sworn on April 24, 2012. He is a general contractor. On April 2, 2009, he was also the president of the Tsawwassen Amateur Baseball League. The baseball season was from mid-April through mid-June. On occasion the league would purchase athletic equipment or clothing from Prostock. Williams stated that he had been a close friend of the plaintiff for 33 years. He advised (at paragraphs 4 to 8):

> I regularly hang out with Terry on evenings and weekends without discussing baseball, athletic equipment, or any business matters whatsoever.
>
> I cannot recall the last time I met Terry for a weekday lunch either prior to or since the Accident, as his office is too far from where I live in Delta. But since I was installing a deck in North Vancouver on the day of the Accident, it seemed convenient to meet for lunch since I wasn't that far away.
>
> The purpose of our lunch was not business related. I simply wanted to have lunch with my oldest friend. I had no intention of discussing any former or future business transactions. I had no questions or concerns about prior purchases, and no need for further purchases at that time.
>
> The only time I do business with Terry is when he delivers sporting goods to the league in Tsawwassen, or when I come to the Prostock office to pick up the goods myself.
>
> Terry never pays for my meals or drinks whenever we socialized. We covered our own tabs.
>
> [paragraph numbering removed]

[22] The defendants have provided evidence to show that several of the leagues of the Tsawwassen Amateur Baseball Association (the Baseball Association) were scheduled to commence in mid-April 2012. The defendants have also furnished copies of invoices regarding purchases from Prostock by the Baseball Association. These invoices show that during the period from February 12, to March 19, 2009, the Baseball Association purchased goods from Prostock totaling $7,542.52. During the period from April 9, 2009 to April 15, 2009, the Baseball Association purchased goods from Prostock totaling $16,913.05. During the period from April 20, 2009 to July 7, 2009, the Baseball Association purchased goods from Prostock totaling $9,551.11. Thus, the Baseball Association purchased goods from Prostock with a total value of $34,006.68, over a period of about five months from February to July, 2009.

[23] At the time of the accident on April 2, 2009, the policies in Chapter 3 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) included the following excerpts:[1]

> **#18.00 TRAVELLING TO AND FROM WORK**
>
> The general position is that accidents occurring in the course of travel from the worker's home to the normal place of employment are not compensable. But where a worker is employed to travel, accidents occurring in the course of travel are covered. This is so whether the travel is a normal part of the job or is exceptional.
>
> *#18.22 Payment of Travel Time and/or Expenses by Employer*
>
> The payment of wages or travelling allowances etc. may in some circumstances be a factor to be considered, but it usually will not be a significant factor, nor is it ever the sole criteria in determining the acceptability of a claim.
>
> **#18.40 Travelling Employees**
>
> Employees whose job involves travelling on a particular occasion or generally are covered while travelling. Where they do not travel to their employer's premises before beginning the travelling required by their work, they are covered from the moment they leave their residence. However, they will not be covered if they first travel to their employer's premises even though their vehicle has been provided by their employer and/or they need that vehicle to do the travelling required by their work.
>
> *#18.41 Personal Activities During Business Trips*
>
> The basic principle followed by the Board is set out in Larson's *Workmen's Compensation Law* as follows:
>
> > "Employees whose work entails travel away from the employer's premises are held . . . to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown." (5)

[1] In this decision, I have applied the policies in effect at the time of the accident on April 2, 2009. While the board of directors of the Board has approved a revision to the policies in Chapter 3 of the RSCM II, those new policies only apply to injuries or accidents that occur on or after July 1, 2010.

This principle covers the activities of travelling, eating in restaurants, and staying in hotels overnight where these are required by a person's employment. What is meant by the reference to a "distinct departure on a personal errand"? It clearly does not simply refer to such everyday activities as eating, sleeping or washing which, in the case of most non-travelling employees would be regarded as personal activities outside the scope of the employment when performed outside normal work hours. Such activities will normally be regarded as within the scope of the employment of an employee who is required to travel. On the other hand, if, for example, a person on a business trip attends a theatre or spends the evening in a public house, these would probably not be regarded as activities in the course of employment.

The test to be applied is set out in policy item #21.00.

Normal activities such as eating, sleeping and washing can be regarded as personal activities which are incidental to the stay in the hotel required as a result of the employment. Where a worker goes out for a purely social evening, the worker may be staying in a hotel as a result of employment, but this employment feature of the situation may be clearly outweighed by the personal nature of the social activity.

#21.00 PERSONAL ACTS

There is a dilemma that is always inherent in workers' compensation. The difficulty, of course, is that the activities of workers are not neatly divisible into two clear categories, their employment functions and their personal lives. There is a broad area of intersection and overlap between work and personal affairs, and somewhere in that broad area the perimeter of workers' compensation must be mapped. An incidental intrusion of personal activity into the process of work will not require a claim, otherwise valid, to be denied.... Conversely, the intrusion of some aspect of work into the personal life of an employee at the moment an injury is suffered will not entitle the employee to compensation. For example, if someone slips in the living room at home and is injured, that person is not entitled to compensation simply on the ground that at the crucial moment the person was reading a book related to work. In the marginal cases, it is impossible to do better than weigh the employment features of the situation in balance with the personal features and reach a conclusion (which can never be devoid of intuitive judgment) about which should be treated as predominant.

[24] The defendants have cited the following statement from *Faryna v. Chorny* (1951) 4 W.W.R. (N.S.) 171, at page 174:

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[25] The defendants submit that with the significant amount of money to be spent by the Baseball Association in the weeks following the proposed lunch meeting, the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in these circumstances is that the plaintiff and Williams were meeting for business purposes.

[26] The defendants further submit that the plaintiff was a travelling employee, as meeting with clients was an integral and essential part of his job. He was driving to have lunch at the time of the accident. He had not gone on a distinct departure for the purpose of a personal errand, as this does not refer to such everyday activities as eating. Accordingly, the plaintiff should be covered for workers' compensation purposes as being in the course of his employment at the time of the accident, even it is concluded that he was travelling to a social lunch rather than a business meeting.

[27] The plaintiff submits that travelling is not a significant aspect of his employment duties. While he does, on most days, leave the office to meet with a client, he also regularly remains in the Prostock office for the entire day. Accordingly, he was not a travelling employee for the purposes of the Act. Even if he was a travelling employee, in going to meet an old friend for lunch he was engaged in a distinct departure on a personal errand. The plaintiff submits that his statement that "anything is possible," regarding whether he and Williams would have discussed some business, was in response to a speculative question with respect to a lunch which never took place. The further evidence of the plaintiff in his affidavit is that it was not his intention to discuss business over lunch, but he could not say that he had any intention to avoid discussing business. The purpose of the lunch was purely personal in nature. The plaintiff submits that none of the criteria set out in RSCM II item #14.00 is met in this case.

[28] The defendants submit that several of the criteria in RSCM II item #14.00 are met. The plaintiff was in the process of doing something for the benefit of his employer as he was *en route* to a scheduled client meeting. As his job description includes sales calls, his travel to meet with a client can be said to have occurred in the course of an action taken in response to instructions from the employer. At the time of the accident, he was

using a vehicle for which he received a travel allowance from the employer. The risk in travelling to a lunch meeting was the same as that to which he was normally exposed in the normal course of production, as travelling to meet with clients was something he did on most workdays.

[29] It is apparent that the applicability of the factors at item RSCM II item #14.00 turns in part on whether the lunch meeting is characterized as being work related or personal in nature. It is necessary to consider whether the plaintiff's lunch meeting with Williams was personal / social in nature or whether it was work related.

[30] A prior decision which involved a plaintiff who was injured in a motor vehicle accident while driving to have lunch with a sales representative was *Appeal Division Decision #97-0026, Streifel v. Nieckarz et al.*[2] The plaintiff was a passenger in a vehicle being driven by the defendant Bracher, who was a sales representative for Weyerhaeuser. That decision found that the plaintiff's injuries arose out of and in the course of his employment. The decision reasoned, in part:

> Upon consideration of the evidence in this case, I find that the lunch trip by the plaintiff and the defendant Bracher arose out of and in the course of their respective employment. I find that the proper characterization of the trip by the plaintiff and the defendant Bracher to go to lunch on May 3, 1994, was that this arose out of their respective job responsibilities. The trip had a business purpose, even if no specific concrete task was to be undertaken and no tangible result was produced. I consider that the employment, rather than the social, features were predominant in respect of this lunch. **In so finding, I have considered the possibility that the lunch involved a purely social transaction. Such would be the case, if the prior business relationship had resulted in a social friendship which continued notwithstanding the cessation of the business relationship.** I am not persuaded, however, that the lunch represented such a purely social transaction. I find that the weight of the evidence points to the conclusion that the lunch involved the continuance or maintenance of a business relationship, with a view to keeping alive the possibility of further contracts for the supply of packaging materials in the future.
>
> [emphasis added]

[2] Accessible at: http://www.worksafebc.com/claims/review_and_appeals/search_appeal_decisions/appealsearch/advancesearch.asp

[31] The Appeal Division decision was the subject of a petition for judicial review. In *Streifel v. British Columbia (Workers' Compensation Board)*, [1997] B.C.J. No. 944, the British Columbia Supreme Court noted:

> **20** The Board observed that no specific work was transacted between the petitioner and Mr. Bracher in that no contract was being discussed or likely to be entered into in the immediate future. However, the lunch invitation came from a sales representative who hoped to retain a former client as a prospective future client. The termination of their prior contractual relationship was based on a change in the fluctuating exchange rate. The maintenance of such "social" contacts would no doubt be conducive to renewing a contractual relationship in the future should the exchange rate permit it. Mr. Bracher, the sales representative, clearly indicated he considered this to be a business contact even though he characterized their business as having been concluded before lunch. His stated purpose of his trip to Canada was to "make several sales calls on past and prospective customers." Significantly, there was no evidence before the Board to reflect any contact between the petitioner and Mr. Bracher outside their employment.
>
> **21** The Board concluded the lunch trip arose out of and in the course of employment as it arose out of their respective job responsibilities. The trip had a business purpose, even if no specific task was to be undertaken and no tangible result produced. The employment, rather than the social features, were considered predominant.
>
> **22** The Board did consider the possibility that the luncheon involved a purely social transaction. It found this would be the case if the prior business relationship had resulted in a social friendship which continued despite the cessation of the business relationship. However, the Board was not persuaded the lunch was a purely social transaction. It found the weight of the evidence pointed to it being the maintenance of a business relationship to keep alive the possibility of future contracts. Thus, the petitioner was a worker whose injuries "arose out of and in the course of his employment."

[32] The court dismissed the petition for judicial review based on principles of curial deference.

[33] The evidence cited by the defendants regarding the extent of the purchases by the Baseball Association from Prostock during the periods both prior to, and after, the motor vehicle accident, is significant. Such evidence tends to support a conclusion that the lunch meeting was incidental to this business relationship. On the other hand, sworn evidence has been provided by both the plaintiff and Williams regarding their longstanding friendship since childhood. Williams' evidence is that he regularly

socialized with the plaintiff on evenings and weekends, without discussing baseball, athletic equipment, or any business matters. The plaintiff's evidence is that he regularly socialized with Williams on evenings and weekends, without discussing business, and the purpose of the lunch was not business related. The plaintiff's evidence is that he had no intention of discussing former or future business transactions, or any business in general with Williams, and that this was to be lunch among friends.

[34] I find that the weight of the evidence supports a conclusion that the predominant purpose of the lunch meeting was personal or social in nature. I accept that given the longstanding friendship between the plaintiff and Williams, the lunch meeting was not scheduled for the purpose of cultivating a business relationship. I find that the circumstances of this case are distinguishable from those addressed in *Streifel*, in that there is strong evidence of a longstanding personal association outside of the plaintiff's employment. I accept the plaintiff's evidence as credible, in respect of his examination for discovery evidence that it was possible that the purchase of baseball equipment could have arisen in the course of the lunch meeting but that this was not the purpose of the lunch meeting. I find persuasive the plaintiff's evidence that the lunch meeting was arranged due to the fact that Williams' work near Capilano Road on April 2, 2009 motor made it convenient for them to meet for a social lunch.

[35] The defendants submit that even it is concluded that the plaintiff was travelling to a social lunch rather than a business meeting, as a travelling employee the plaintiff should be covered for workers' compensation purposes as being in the course of his employment at the time of the accident.

[36] *WCAT-2006-02659* is summarized as noteworthy on the WCAT website[3]. That decision, which concerned the status of a home care worker, reasoned as follows:

> Returning to the situation used to illustrate the original rule regarding travelling workers, the frequency with which a trip occurs does not appear to be a relevant consideration when deciding whether the trip is covered. In that example, the employee returned to the mine every night to throw the switch and his journey to and from the mine was covered under the Act because the making of the journey was "the essence of the service performed." Even though he returned to his usual place of employment to perform this duty, the travel was not considered a commute to work because it was such a significant aspect of the service he was employed to provide.

[3] As set out in item #19.3 of WCAT's *Manual of Rules of Practice and Procedure*, noteworthy decisions may provide significant commentary or interpretive guidance regarding workers' compensation law or policy, comment on important issues related to WCAT procedure, or serve as general examples of the application of provisions of the Act, policies or adjudicative principles. Noteworthy decisions are not binding on WCAT. Although they may be cited and followed by WCAT panels, they are not necessarily intended to be leading decisions.

> It appears that, at least at the appellate level, the policy rule described by this example has been extended to cover working situations, such as home care workers, which may not have been contemplated when the policy was developed. **But, if travel is an integral or essential aspect of the service provided, there does appear to be a sound rationale for extending the policy on travelling workers to those workers.** From that perspective, the trip from the worker's home to the first client is covered because it is part of the service provided even though the worker may not be paid for that aspect of the service.
>
> The frequency with which the trip is repeated does not affect the worker's coverage if the basis for coverage is that the trip is an essential aspect of the service provided. It is not a commute to work; it is part of the work.
> [emphasis added]

[37] The plaintiff's employment as a sales representative required him to travel away from his office to meet with clients on most days. He received a car allowance from Prostock of approximately $400.00 per month in relation this travel. I find that such travel to meet with clients was an integral or essential aspect of the service provided by the plaintiff in his employment as a sales representative. Accordingly, I accept the defendants' submission that the plaintiff was a travelling employee within the meaning of the policy at RSCM II item #18.40.

[38] Pursuant to the policy at RSCM II item #18.41, as a travelling employee the plaintiff was covered for workers' compensation purposes continuously during the trip except when a distinct departure on a personal errand is shown. This principle covers the activities of travelling and eating in restaurants, and staying in hotels overnight where these are required by a person's employment. The phrase "distinct departure on a personal errand" does not simply refer to such everyday activities as eating. Such activities will normally be regarded as within the scope of the employment of an employee who is required to travel. Normal activities such as eating can be regarded as personal activities which are incidental to travel required as a result of the employment. However, where a travelling worker goes out for a purely social evening, the employment feature of the situation may be clearly outweighed by the personal nature of the social activity.

[39] *WCAT-2008-01866 / WCAT-2008-01867*, *Makhani v. Diener et al.*, found that a worker's decision to travel some additional distance for the sake of exercising an element of personal choice as to where he took his lunch may reasonably be characterized as involving an insubstantial deviation for personal reasons, and need not represent a distinct departure on a personal errand. That decision reasoned:

> If the plaintiff had taken his lunch in close proximity to FlexyShop, there would be no basis for considering that he had engaged in a distinct departure on a personal errand. **Conversely, if he had driven to an**

> **adjacent municipality for the purpose of meeting a friend for lunch, or to engage in personal shopping during his lunch break, there would be strong grounds to consider that he had engaged in a distinct departure on a personal errand.**
>
> ...
>
> I consider that the plaintiff's circumstances, in respect of his decision to drive to have his lunch at Tim Hortons, are not comparable to those of the truck operator described at RSCM II item #18.41. In view of the facts that the plaintiff had to allow time for the work at FlexyShop to be completed, that it was around noon, and that there were likely only limited alternative restaurants to choose from in the area surrounding FlexyShop, I do not consider that the plaintiff's decision to drive five miles in order to go to a particular restaurant in Delta amounted to a distinct departure on a personal errand. I consider that the plaintiff's decision to travel some additional distance for the sake of exercising an element of personal choice as to where he took his lunch may reasonably be characterized as involving an insubstantial deviation for personal reasons.
>
> [emphasis added]

[40] The plaintiff's travel from Burnaby to North Vancouver was for the purpose of meeting with a friend. The stop for lunch was not incidental to any other business being conducted by the plaintiff. For example, the lunch meeting was not arranged as being incidental to other travel the plaintiff was required to make for work purposes in North or West Vancouver. The plaintiff's planned travel along Highway No. 1 over the Ironworkers Memorial Bridge was not travel he would otherwise have been required to undertake for work purposes. In view of my conclusion that the purpose of the lunch meeting was personal or social in nature, I find that the plaintiff's stop for lunch was not incidental to work-related travel to meet with a client.

[41] In the circumstances, I find that the plaintiff's travel to North Vancouver to meet Williams for lunch involved a distinct departure on a personal errand. Accordingly, the plaintiff was not covered for workers' compensation purposes in relation to his travel away from his employer's premises, for the purposes of attending a personal lunch meeting.

[42] I find, therefore, that the injuries suffered by the plaintiff in the April 2, 2009 accident did not arise out of and in the course of his employment within the scope of Part 1 of the Act.

Status of the defendants, David Noyes and Price's Trucking Ltd.

[43] In view of my conclusion regarding the status of the plaintiff, it does not appear necessary to proceed to address the status of the defendants. In the event that any further determination is required in relation to the legal action, a request may be made for a supplemental certificate.

Conclusion

[44] I find that at the time of the April 2, 2009 accident:

(a) the plaintiff, Terry Robinson, was a worker within the meaning of Part 1 of the Act;

(b) the injuries suffered by the plaintiff, Terry Robinson, did not arise out of and in the course of his employment within the scope of Part 1 of the Act.

H. Morton

Herb Morton
Vice Chair

HM:gw