

**Workplace Safety and Insurance
Appeals Tribunal**

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**Tribunal d'appel de la sécurité professionnelle
et de l'assurance contre les accidents du travail**

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15-Nov-2021

CONFIDENTIAL

Distribution List:

Mr. Dakota Forster
Mr. Mukesh Verma
Mr. Navalogan Nadesan
WSIB

Decision No.: 1675 21
WSIAT #: 2019-0001380
WSIB File No.: 30583166, 30513952
Case Name: Intact Insurance Co. ats N. Nadesan

Enclosed please find a decision made by the **Workplace Safety & Insurance Appeals Tribunal (WSIAT)** in this case.

A copy of this decision was also sent to the Workplace Safety & Insurance Board (WSIB) so that the WSIB can place the decision in the appropriate WSIB case file and if applicable, take the necessary steps to implement the decision.

Please note that if the decision requires the WSIB to take action, it may take at least one month for the WSIB to process the decision before implementing the Tribunal order(s). The WSIB may require additional information from you and if so, they will contact you directly.

If you have any questions concerning the implementation of this decision by the WSIB, please contact the WSIB officer or department handling the case file. You may contact the WSIB at 416-344-1000; toll-free within Ontario 1-800-387-0750 or TTY: 1-800-387-0050.

If the decision requires further action by the Tribunal (WSIAT) to process the case, a representative of the Tribunal (WSIAT) will contact you.

Yours truly,

Workplace Safety & Insurance Appeals Tribunal

This decision contains confidential information. It does not name the worker. Do not reveal the identity of the worker to anyone, either inside or outside your organization, except to people who need to know it for workplace purposes.



WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

DECISION NO. 1675/21

BEFORE: B. Kalvin: Vice-Chair

HEARING: November 10, 2021, at Toronto
Oral by teleconference

DATE OF DECISION: November 15, 2021

NEUTRAL CITATION: 2021 ONWSIAT 1816

APPLICATION FOR ORDER UNDER SECTION 31 OF THE *WORKPLACE SAFETY AND INSURANCE ACT, 1997*

APPEARANCES:

For the applicant: D. Forster, Lawyer

For the respondent: The respondent represented himself

Interpreter: W. Dharma (Tamil)

REASONS

(i) Introduction

- [1] These are the reasons for decision of the Workplace Safety and Insurance Appeals Tribunal with respect to an application under section 31 of the *Workplace Safety and Insurance Act* (the “WSIA”). The application arises out of a motor vehicle accident that occurred on April 21, 2017, on Highway 6, in Ontario. Intact Insurance Company (the “applicant”) seeks a determination that the respondent, who was a driver of one of the vehicles involved in the accident, is a person entitled to claim benefits under the WSIA.

(ii) Background

- [2] The facts giving rise to these applications are straightforward and are not in dispute. On April 21, 2017, the respondent was driving a transport truck that was involved in a two-vehicle collision. The truck was owned by a numbered company, carrying on business as Rahesh Canada. The company is a Schedule 1 employer under the WSIA.
- [3] The applicant alleges, and at the hearing of this application the respondent conceded, that at the time of the accident he was a worker employed by Rahesh Canada as a truck driver. The truck was operating under an insurance policy issued by the applicant. At the time of the accident, the respondent was on his way to pick up a load of cargo from one of his employer’s clients.
- [4] The respondent was injured in the accident. As a result of these injuries, the respondent made a claim for statutory accident benefits under Section 268 of the *Insurance Act* to the applicant, that is, to the insurer who had issued the insurance policy for the truck. In order to receive statutory accident benefits from the applicant, the respondent signed an assignment of workers’ compensation benefits in favour of the applicant. In other words, the respondent agreed to assign to the applicant any benefits he might receive as a result of a workers’ compensation claim. After the assignment was executed, the applicant began paying the respondent the statutory accident benefits prescribed in the *Insurance Act*.
- [5] After the applicant began paying the respondent statutory accident benefits under the *Insurance Act*, it applied to this Tribunal for a determination under section 31(1)(c) of the WSIA that the respondent is a person who “is entitled to claim benefits under the insurance plan,” that is, under the WSIA. The reason that the applicant seeks this determination is that under the *Insurance Act* and Regulations, an insurer is not required to pay statutory accident benefits to a person who “is entitled to receive benefits under any workers’ compensation law or plan.” Thus, the applicant seeks a determination under section 31(1)(c) in order to be relieved of its obligation to pay statutory accident benefits to the respondent. Further, if the applicant is successful in this application, and if the respondent receives benefits from the Board, then the applicant would be entitled to restitution pursuant to the assignment of benefits executed by the respondent.

(iii) Issues

- [6] As noted, the application is brought under section 31 of the WSIA. That provision reads as follows:

31 (1) A party to an action or an insurer from whom statutory accident benefits are claimed under section 268 of the Insurance Act may apply to the Appeals Tribunal to determine:

- (a) whether, because of this Act, the right to commence an action is taken away;
 - (b) whether the amount that a person may be liable to pay in an action is limited by this Act; or
 - (c) whether the plaintiff is entitled to claim benefits under the insurance plan.
- (2) The Appeals Tribunal has exclusive jurisdiction to determine a matter described in subsection (1).

[7] The applicant seeks a determination under section 31(1)(c) that the respondent is a person entitled to claim benefits under the WSIA. Entitlement to benefits under the WSIA is governed by section 13, which provides that a worker is entitled to benefits for an injury if that injury results from an accident “arising out of and in the course of employment.” Subsections 13(1) and (2) read as follows:

13(1) A worker who sustains a personal injury by accident arising out of and in the course of his or her employment is entitled to benefits under the insurance plan.

(2) If the accident arises out of the worker’s employment, it is presumed to have occurred in the course of the employment unless the contrary is shown. If it occurs in the course of the worker’s employment, it is presumed to have arisen out of the employment unless the contrary is shown.

[8] Accordingly, the narrow question on which this application turns is whether the respondent is was a worker in the course of his employment at the time of the accident.

(iv) Decision

[9] As noted above, at the hearing, the application was unopposed. The respondent indicated that he agreed that he was an employee or worker of the numbered company. He does not dispute that he was working when the accident occurred. As noted earlier, the company for whom he was working is a Schedule 1 employer. I have reviewed the application record and based on the evidence contained therein as well as that provided at the oral hearing, I am satisfied that at the time of the accident giving rise to this application, the respondent was a worker in the course of his employment for a Schedule 1 employer. He is therefore a person who is entitled to claim benefits under the WSIA and the applicant is entitled to a determination to that effect pursuant to section 31(1)(c) of that statute.

DISPOSITION

[10]

The application is allowed:

- The respondent is a person entitled to claim benefits under the insurance plan established by the WSIA with respect to injuries he sustained in the motor vehicle accident of April 21, 2017.

DATED: November 15, 2021

SIGNED: B. Kalvin

COVID-19: Information and Resources

In light of the evolving COVID-19 situation, the WSIAT has prepared this list of on-line resources to assist parties. This document is intended as a general resource only.

Please visit the WSIAT's website for general information and updates on how COVID-19 is affecting our operations at <http://www.wsiat.on.ca/>. Information on finding a representative can be found at http://www.wsiat.on.ca/en/accessingServices/finding_a_rep.html.

Health and Wellness Resources

Ontario Ministry of Health: This link provides information on how the Ministry of Health is helping to keep Ontarians safe during the 2019 Novel Coronavirus outbreak, including how to protect yourself and how to recognize symptoms. <https://covid-19.ontario.ca/>

Public Health Agency of Canada: This link provides information and resources about COVID-19 preparedness, including a COVID-19 virtual assistant. <https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19.html>

Public Health Ontario: This link provides COVID-19 information in 7 languages (English, Simplified Chinese, Farsi, Italian, Korean, Spanish, Tagalog). <https://www.publichealthontario.ca/en/diseases-and-conditions/infectious-diseases/respiratory-diseases/novel-coronavirus/public-resources>

The Centre for Addiction and Mental Health: This link provides information and resources to support mental health and wellness during COVID-19 and other situations. <http://www.camh.ca/en/health-info/mental-health-and-covid-19>

Mental Health Commission of Canada: This link provides information and resources to support mental health and wellness during COVID-19 and other situations. <https://www.mentalhealthcommission.ca/English/covid19>. The "Mental Health First Aid COVID-19 Self-Care & Resilience Guide" is available at: <https://www.mhfa.ca/en/blog/mental-health-first-aid-covid-19-self-care-resilience-guide>

Economic and Financial Resources

Canada's COVID-19 Economic Response Plan: This link describes the supports the Federal government has put in place for individuals and businesses. <https://www.canada.ca/en/departement-finance/economic-response-plan.html>

Ontario Works: This link provides information on applying for financial and employment assistance. <https://www.ontario.ca/page/social-assistance>.

Canada Pension Plan: This link provides information on the Canada Pension Plan (CPP) retirement pension that replaces part of your income when you retire. <https://www.canada.ca/en/services/benefits/publicpensions/cpp.html>.

Your municipality may offer additional assistance and resources. Please visit your municipality's official website for information.

February 5, 2021

