Should Workers' Win Lawsuit Based on Injures Suffered While Being Driven by Co-Worker?

SITUATION

The general manager of an egg farm asks his granddaughter, who also works at the farm, to drive 14 workers back to a shelter, where the workers are usually picked up and dropped off every day because they have no other transportation. The farm doesn't pay the granddaughter for this task. She and her grandfather consider her driving the co-workers to be a favour. The grandfather asks her to take two trips because there are so many workers. But she refuses, saying she's making one trip. The granddaughter drives the workers in her mother's pick-up truck, with several workers seated in the cab and the rest riding in the box of the truck without seats or seatbelts. While speeding, she loses control of the truck, which goes off the road and rolls down an embankment. The workers are injured and sue the granddaughter, claiming that she was negligent. She argues that the lawsuit is barred by workers' comp law because she was acting in the course of her employment at the time of the accident. In addition, she says the workers were also negligent because they chose to ride in the back of the truck with no seats or seatbelts.

QUESTION

Should the workers' win their lawsuit'

A. Yes, because they were injured due to the granddaughter's negligent driving.

B. Yes, because they're entitled to damages in addition to workers' compensation.

C. No, because the injuries were work-related and so the lawsuit is barred by workers' comp law.

D. No, because the workers were also negligent.

ANSWER:

A. The granddaughter's negligence caused the accident and she wasn't acting in the scope of employment at the time, so the workers should win their lawsuit.

EXPLANATION

This hypothetical is based on two BC decisions relating to the same traffic accident, one by the Court of Appeal addressing the workers' comp issues and the other by the BC Supreme Court deciding the liability issues. The WCAT had ruled that the granddaughter's driving the workers wasn't work-related activity. She appealed. The appeals court ruled that whether the granddaughter was acting in the course of her employment was clearly within the WCAT's expertise and its decision was entitled to deference. The court explained that some personal activity can occur during work without removing a worker from the scope of employment; likewise, some work-related activity can be performed on personal time without putting the worker within in the scope of employment. The WCAT has discretion to determine which predominates, the work or the personal activity. The court was satisfied that evidence supported the WCAT's decision that the activity was outside the scope of employment. For example, the granddaughter wasn't paid to drive the truck and considered doing so a favour for her

grandfather. The Supreme Court later found that the granddaughter drove too fast, causing her to lose control of the truck. Her negligence caused the injuries. That court also said the workers effectively were given no choice but to ride in the back of the truck and so weren't negligent in riding without seats or seatbelts.

WHY THE WRONG ANSWERS ARE WRONG

B is wrong because the basis of the workers' comp system is that individual employees give up their right to sue for damages in exchange for the payment of workers' comp benefits for work-related injuries. So if an incident occurred in or arose out of the course of employment, any injuries workers suffered in it would be compensable under worker's comp and the workers couldn't sue for negligence. In this case, the workers are either entitled to receive workers' comp for their injuries if the traffic accident was work-related or damages from the granddaughter for negligence if it wasn't work-related'but they're not entitled to both.

***Insider* Says:** For more information about workers' comp, see our Workers' Compensation Compliance Centre.

C is wrong because the injuries didn't occur in the course of employment. The truck wasn't owned by the farm and the accident didn't occur during performance of work tasks. The workers were essentially on their way home. (For examples of when travel to work is and isn't within the scope of employment, see 'Are Injuries Suffered While Driving to Work Job-Related'' June 2007, p. 20.) Additionally, the farm didn't require the granddaughter to transport the workers. Rather, her grandfather asked her to drive them as a favour. Therefore, it wasn't a work-related task but a voluntary act.

D is wrong because although riding in the back of a pickup truck without seats or seatbelts is dangerous, the workers here didn't have a choice and thus weren't negligent.

Contributory negligence is a defence that argues the injured parties were also negligent and their negligence contributed to their injuries. The granddaughter raised this defence. But the workers were picked up at the shelter and had no other way to get back there other than the granddaughter's ride. The granddaughter indicated she would make only one trip so they all had to fit in the truck for that trip. And with 14 workers, not all could fit in the cab; some were forced to ride in the back.

SHOW YOUR LAWYER

Browne v. Workers' Compensation Appeal Tribunal, [2013] B.C.J. No. 2520, Nov. 8, 2013 (workers' comp issues); *Tataryn v. Browne*, [2014] BCSC 13, Jan. 7, 2014 (liability issues)