

Name of Presenter: James Girden  
Date Received : May 20 2004

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May 12, 2003

Legislative Review Committee  
P.O. Box 1770  
Station Main  
Winnipeg, Manitoba  
R3C 2Z9

Dear Committee Members:

**RE: Review of Workers Compensation Act of the Province of Manitoba**

As I may not be able to attend on the dates available in Winnipeg due to my schedule I am providing our request to review the following section of the Act.

My name is James Girden, I have two reasons as to why I am writing to you to ask you to consider visiting what the definition of a workplace is for the purposes of the Act and injured workers.

I am actually a bus operator for Winnipeg Transit, and for the last 10 years I have been elected and serving as the Executive Vice President of the Amalgamated Transit Union Local 1505. Part of my job is to represent the bus operators and maintenance staff at Winnipeg Transit as well as the Bus Operators in Brandon, Manitoba. A large portion of my portfolio is to assist injured workers in applying for and appealing Workers Compensation Claims.

I am going to speak to you as a bus operator first and an advocate second. When you are bus operator your hours of work can fluctuate. The locations you start your shift can be anywhere within the City, which are actually at the employers discretion. Unless you are a very senior person, you will work split shifts. Split shifts are shifts that can have the same commencement and finish locations. Straight shifts are much the same. The difference between a straight shift and a split shift, is that you start at one location and finish at another location once a day. With a split shift, you can start at one location finish at another location, travel to a different location to start your next shift and finish at a different location. I will provide examples of these shortly. You also have to understand straight shifts can be anywhere from 7.5 hours to 8 hours long, and that in order to complete split shifts can take up to 12 to 13 hours, to be paid for 7.5 - 8 hours.

The reason we are asking the committee to consider the definition of workplace is for the following reasons.

These are actual examples:

Employee "A" starts a shift at 421 Osborne St. which is one of Winnipeg Transit's garages, known as Fort Rouge Garage (FRG for short)

FRG 5:34 finishes at Grace Hospital at 9:40 a.m.  
Starts again at 11:30 at Gary and Portage and finishes at 14:30

this operator has to travel from the Grace Hospital by bus to downtown to start their next shift.

We have been advised that unless the operator is actually in charge of his bus (driving it) that the operator is not covered under the Compensation Act if they happen to get injured. The operator is traveling for the purpose of work and not for their own pleasure, they have to get to their next point to start on their own.

Then there is the case, which actually occurred, where a woman operator was suppose to take their bus over at Spence and Portage, they had parked their car on a side street and actually saw their bus approaching, they were coming through a small park and tripped over a tree route and fell flat on their face. The bus was right across the street from where they were suppose to take over. The claim was denied as they were not in the course of their employment according to the Board. They were their for their employment and for no other reason.

In another case, a bus operator had taken a bus to the location that they were to take over, Fort and Portage. As the operator stepped away from the bus to wait for the bus he was to take over in about 20 minutes, he tripped over a concrete abutment and drove the thermos he was carrying into his chest. He was off work for quite a while, the Board initially denied benefits but the Appeal Commission ruled in favor.

We have been told during other unsuccessful claims appeals that the employers position is that unless you actually board the bus and take it over, you should not be covered. The example used was a operator who finished their first shift at the transit base on Osborne and had to walk out to the front of the garage to take a bus to the Bay, alight on Vaughan St. then walk either through the Bay or down to Portage, and walk 2 blocks west to take over their next shift at Spence and Portage. The employer's position was that they should not be covered, as they were not actually in control of their bus.

There are bus operators traveling all over the City of Winnipeg, from one shift to the next, or to start their shifts, at locations such as Garden City Shopping Centre, Kildonan Place Shopping Centre, Grace Hospital, School Road, Polo Park, University Crescent and Pembina Highway, just to mention a few.

Like yourselves, when you arrive on the employers premises you are considered there at and in the course of your employment, the Act clearly defines the employer premises. In the bus operators case, they do not always arrive at the employers offices or property. A bus operator who takes over on the street is not considered in the claims I have dealt with as being on the

employer's premises.

Much like when a worker sits in the cafeteria in a work place they are covered. Where and when is a bus operator who has to take over their bus on the street considered at and in the course of their employment? Where does the employer's work location start and stop, considering the bus operator works for the City of Winnipeg, and is using the City of Winnipeg streets and sidewalks to go to work, as well as when they stand at a bus stop that is serviced, maintained and designated by the employer?

The Act identifies a workplace, but it does not take into consideration workers who, in order to complete their work or shifts have to travel. Unless their contracts pay them for the time to travel the worker is considered not covered.

I have provided more examples of actual crew sheets to show the broad range of work sites, which are attached and a copy of the locations as they are shown in short form.

There is also have a driver's lounge downtown on Gary Street, where operators who don't have enough time to go home can go and wait their time then leave the location to take over their next shift if they start downtown. Which brings me to another example of a bus operator who had gone to the lounge to wait their time, then walked the 5 blocks west to take over their next shift and twisted her ankle, filed for compensation and was denied because she was not in charge of her bus.

The Act defines a workplace in most cases, such as construction sites and parking lots of the employer. Here is another example of an operator not covered. A bus operator had taken a bus to the Transit base on Osborne, alighted from the bus right across the street, only four lanes away from the entrance to the Transit property, she twisted her ankle, but because she was only a few steps away the claim was denied. If she had twisted it on the property on the way in, her claim would have been accepted.

Winnipeg Transit requires the operators to go to their next start point, how the worker gets there is their business. The employer however, in their training program suggests that the employee be at the next start point well in advance of the bus getting there. Dependent upon where you travel to for your next shift, this may require you to start your journey and arrival long before your bus shows up. For example, to take over a bus at Kildonan Place and you finished downtown, you have to get started a minimum of 45 minutes to get there in time to take the bus over, and still have to wait for the bus to arrive. Yet there is no coverage for the bus operator.

If the operator fails to show up on time and misses the bus they are to take over, they lose their days pay plus they can be disciplined for a miss on the street. If they are injured while they wait for the bus or on their way their claim is denied.

I request that the committee consider the above facts, and amend the Act to consider and implement a reasonable definition of a workplace/work site. I further, request that the Committee acknowledge that a bus operator in travel for the purposes of starting their next shift at a location other than that of the Winnipeg Transit property have their claims accepted as this

traveling is in and for the course of their employment. If the worker deviates from the normal path, for example to go shopping then they have taken themselves outside their employment.

I understand that this may be a bit confusing, as I know trying to explain this in a letter is pretty hard to do, I offer to meet the committee at anytime to explain or provide further information in order to better understand the issues facing workers like bus operators who have to go to their work as the work does not come to them.

I thank you for your time and attention in this matter. Sorry for being so long winded but it is hard to explain this issue in two paragraphs.

Respectfully submitted.

James Girden  
Bus operator / Executive Vice President

I can provide the Claim No. and the Workers names if you need them